

A Function-Sensitive Approach to the Political Legitimacy of Global Governance

EVA ERMAN*

This article draws attention to an aspect that thus far has escaped systematic scrutiny in the theoretical literature on the political legitimacy of global governance – functions. It does so by exploring the idea that the content and justification of a principle of political legitimacy for global governance may depend on the function of the entity it is supposed to regulate (for example, law making, policy making, implementation, monitoring). Two arguments are made: one meta-theoretical and one substantive. The meta-theoretical argument demonstrates the fruitfulness of adopting a ‘function-sensitive approach’ to political legitimacy to address this aspect. The substantive argument develops the contours of an account of political legitimacy by applying this approach. This account consists of five regulative principles, which are sensitive to, and vary in accordance with, different functions in global politics.

Keywords: political legitimacy; global governance; function-sensitivity; democracy; justice

Political legitimacy is generally perceived as a desirable quality of global governance arrangements, and the goal of strengthening political legitimacy in the exercise of global public power has become a key concern among international agents, civil society organizations, national governments and concerned citizens alike. Despite this broad consensus, however, there is still little agreement on what are the most suitable principles of legitimacy of global governance.¹ This is not at all strange, since normative-theoretical research on the political legitimacy of global governance is still at an embryonic stage.

The overall aim of this article is to focus on one aspect that has thus far escaped systematic scrutiny in the theoretical literature on the political legitimacy of global governance – functions. This is done by exploring the idea that the content and justification of a principle of political legitimacy may be dependent on the function that an entity is supposed to perform (for example, decision making, implementation, monitoring). More specifically, two arguments are made: one meta-theoretical and one substantive. The meta-theoretical argument consists in demonstrating the fruitfulness of adopting what I call a ‘function-sensitive approach’ to political legitimacy for exploring this idea. The substantive argument consists in developing the contours of an account of political legitimacy by applying this function-sensitive approach. By ‘contours’ I mean it is not a full-fledged theory. Rather, it comprises five principles that I consider central to the political legitimacy of global governance. However, no claims are made with regard to them

* Department of Political Science, Stockholm University (email: eva.erman@statsvet.su.se). I owe special thanks to Thomas Christiano, Rainer Forst, Jens Steffek, Jonas Tallberg and Michael Zürn for comments on earlier drafts of this article. Thanks also to the participants of the ‘Legitimacy Beyond the State: Normative and Conceptual Questions’ conference organized by Antoinette Scherz, Nate Adams and Cord Schmelzle in Bad Homburg in early 2017, and to the participants of the ‘World Government or Else?’ workshop in Zürich in June 2017, organized by Attila Tanyi. Moreover, I wish to thank editor Hugh Ward and the anonymous referees of the journal for valuable comments and guidance. In addition, I am grateful for the generous funding of this research from the Swedish Research Council and Marianne and Marcus Wallenberg Foundation.

¹ I use the terms ‘political legitimacy’ and ‘legitimacy’ interchangeably. Both refer to the political legitimacy of global governance unless stated otherwise.

being necessary and/or jointly sufficient for an exhaustive account. Taken together, the principles are better described as constituting a minimalist account.²

Moreover, the account is best described as ideal-theoretical in the sense that it is developed under permissive feasibility constraints (described in more detail below). Thus the nature of the argument, which consists of abstract and comprehensive theorizing, is such that I will not be able to address many important concerns in relation to political legitimacy in global governance, not least those relating to institutional design, realizability and non-ideal theory. My hope is to show that this kind of broad strokes theorizing about functions in global decision making is still able to take the normative discussion about political legitimacy in global governance in a more nuanced direction that is less bound by one particular core value or normative ideal (for example, justice or democracy).

The article is divided into five sections. The first section addresses some problems in the current theoretical literature that come to the fore when focus is directed at functions. Thereafter, I discuss the basic ideas of the function-sensitive approach and its suitability to deal with this aspect, also in relation to competing accounts. In the third section, the function-sensitive approach is adopted through which five principles of political legitimacy are defended in relation to main functions in global governance. The fourth section discusses the justificatory relationship between these functions according to the suggested function-sensitive approach, and the final section concludes.

PROBLEMS OF POLITICAL LEGITIMACY IN GLOBAL GOVERNANCE

Political legitimacy has thus far been theorized primarily in relation to the domestic domain. However, in response to problems that increasingly transgress nation-state borders – such as migration, world poverty, trade and climatic change – ever more attention has been directed to what political legitimacy may mean in global politics. It is not self-evident that the principles of political legitimacy applied to states are the most suitable ones for global governance arrangements. In recent years, several tendencies have fortified the need to look at the specific circumstances of global politics, such as the emergence of new kinds of powerful actors, new forms of power projection, relations of domination and the exercise of unchecked powers.³

Political legitimacy in global governance has been broadly approached in one of two ways: utilizing the ideal of justice or the ideal of democracy as a normative source. The justice approach to political legitimacy often takes a cue from John Rawls' domestic theory of justice and assesses global governance institutions as part of a global basic structure (or global institutional order), which is supposed to be sufficiently similar to the domestic one to be a proper subject of principles of justice and political legitimacy.⁴ While individual theorists differ in how they define justice in detail, there is wide agreement on the general characterization of principles of justice as establishing when institutions give their subjects what they are owed, which is often expressed in terms of basic human rights and a fair distribution of burdens and benefits among citizens.⁵ Moreover, political legitimacy is typically theorized as a weaker form

² Importantly, though, the developed account is not meant to be applicable *only* to global governance. Rather, it is an account of political legitimacy that is developed in the context of the specific problems we encounter in global politics, where functions are scattered rather than unified within a larger system (such as in the domestic case). In light of the ideal-theoretical nature of the argument pursued, however, it is better described as a sketch of a *general* account of political legitimacy. But since I cannot explicitly demonstrate this generality within the limited scope of this article, I demonstrate its applicability to (at least) global governance.

³ Bohman 2004; Erman 2016, 33; Macdonald and Ronzoni 2012.

⁴ Buchanan 2002; Moellendorf 2002; Pogge 1989.

⁵ Dworkin 2000; Rawls 1971; Tomasi 2001; Valentini 2012.

of justice: global governance arrangements are legitimate insofar as they sufficiently meet the demands of justice (for example, by protecting certain basic rights). The focus is thus on minimal standards rather than full justice.⁶ According to one of the more influential accounts, for example, a ‘wielder of political power’ – in the ‘making, application, and enforcement of laws’ – is legitimate if and only if it protects ‘at least the most basic human rights of those over whom it wields power’, and does so through actions and processes that themselves respect these basic rights.⁷

If the justice approach has predominated in the philosophical literature on this topic, the democracy approach is by far the most popular in empirically driven international political theory: there is a growing literature on democracy in a global context. Political legitimacy is often theorized in terms of core ‘democratic’ values, such as inclusivity, deliberation, participation and transparency rather than minimal justice.⁸ For example, John Dryzek and Hayley Stevenson study the political legitimacy of global climate governance and argue that authoritative decisions are legitimate from a deliberative democratic perspective ‘to the extent they reflect inclusive and authentic dialogue responsive to the needs of all affected parties’.⁹

To my knowledge, no account adopting the two approaches has systematically analysed political legitimacy in relation to different kinds of functions in global governance (more on this below). I use the term ‘function’ here broadly to refer to the main intended purpose or task of an agent or institution (real or imagined).¹⁰ Intuitively, it seems plausible that different functions may call for different demands of legitimacy, and that different values may turn out to be fundamental in the regulation of these functions (justice, democracy, etc.). For example, minimal justice in terms of the protection of basic rights may be more important for regulating some global governance arrangements than others. And it is far from clear that inclusive and authentic dialogue that is responsive to all affected parties should be essential for the political legitimacy of *all* kinds of agents and institutions in global governance, independent of their main intended purpose or task – that is, the *kind* of political practice that the principles are supposed to regulate. It is also far from obvious that all such entities should be regulated by a criterion of inclusion in the form of ‘all *affected* parties’ as is often claimed by advocates of both the justice approach and the democracy approach (more on this below).

If we find it plausible that different functions in global governance – such as decision making, implementation, enforcement, evaluation and monitoring – may call for different legitimacy demands, then a similar pluralistic assumption could presumably also be made when we shift from the ‘exercise side’ of political legitimacy to the ‘recipient side’, that is, those over whom political power is exercised. According to the traditional understanding of political legitimacy as the right to rule, those to whom the rules apply are often claimed to have a *duty to comply*.¹¹ However, we have reason to believe that this strong ‘uptake condition’, while appropriate for law making, may be less appropriate for other exercises of political power. In other cases, a

⁶ Buchanan 2010, 81.

⁷ Buchanan 2002, 703.

⁸ Bäckstrand et al. 2010; Dryzek and Stevenson 2014; Pattberg and Zelli 2015.

⁹ Dryzek and Stevenson (2011, 1870); for a similar view, see Bohman (2012).

¹⁰ The ‘intentionality’ qualifier is important, since an institution designed to implement policy may perform it poorly and may have other unintended effects. The ‘ontological’ qualifier is also important, since in the ideal-theoretical project pursued here, the content of political legitimacy is not determined *only* in relation to existing agents and institutions but also in relation to the *kinds* of agents and institutions we depict are required by the regulative principles. In this way, the project is faithful to coherentism as a theory of epistemological justification (see the ‘Competing Accounts’ section below for more about problems with practice dependence).

¹¹ Buchanan 2013; Christiano 2013.

weaker form of uptake condition may be more justified, such as a *duty not to interfere*, or even no uptake condition at all, such that no particular pro-attitude is required towards the political entity on the part of the affected subjects as long as this entity fulfils certain normative criteria.¹² I argue below that it would be a mistake to restrict political legitimacy to one kind of uptake condition if we wish principles of legitimacy to be applied to a wide range of functions in global governance.

In light of these two pluralistic assumptions – about the likelihood of different demands of legitimacy in relation to different functions as well as different uptake conditions – it is not too far-fetched to suspect that principles of legitimacy might have a different *scope* such that different inclusion criteria apply. In democratic theory, the so-called boundary problem addresses the question of who is rightfully included in the *demos* (the people) or in the democratic process. In the last few years, there has been an intense debate in political philosophy between two allegedly competing criteria: the ‘all-affected interests principle’ – stressed, as we saw above, by Dryzek and Stevenson¹³ – and the ‘all subjected principle’.¹⁴ From a function-differentiated viewpoint, however, these principles may be compatible and possible to incorporate into a unified account, since they are justified vis-à-vis different functions in the exercise of public power in the global domain.¹⁵

THE MERITS OF A FUNCTION-SENSITIVE APPROACH

In this section, I suggest that a function-sensitive approach to political legitimacy is fruitful for theorizing about political legitimacy in global governance. Such an approach is tied to a conceptual framework that opens up space for a wide range of actors and institutions. In the normative-theoretical literature, political legitimacy is generally characterized as a virtue of political entities and the rules (policies and laws) made within them.¹⁶ It is furthermore often assumed that principles of political legitimacy regulate the relationship between political entities that make, apply and enforce rules, and the subjects to whom these rules apply.¹⁷ Hence, proponents of the justice approach and the democracy approach alike tend to focus on rule making, which based on a modern understanding concerns law making and policy making. The problem from a function-sensitive view is that many global governance arrangements have other functions in global politics, such as international courts. While it seems objectionable to demand that such entities become democratic in the traditional sense, it seems equally objectionable to allow them to exercise power without any requirements of legitimacy.

Apart from a focus on rule making, the prevalent philosophical view of political legitimacy furthermore employs a rather strong understanding of the ‘right to rule’, which emphasizes the exclusive right to use coercion to secure compliance. As much as this notion may be fitting for a nation-state context, it seems unsuitable for global politics. None of the existing global governance arrangements rule or claim to rule coercively in this robust way, and there seems to be no reason to be so restrictive about which entities can potentially count as legitimate in the global domain.¹⁸ In order to capture the main functions in global governance, a function-sensitive approach requires a broader conceptual framework.

¹² Christiano 2013.

¹³ See also Benhabib 2004; Goodin 2007; Gould 2004.

¹⁴ Dahl 1989; Erman 2014b; Habermas 1996.

¹⁵ For attempts to incorporate these two principles into a unified normative account, see Owen (2012) and Forst (2011). For an exchange on Forst’s view on this, see Erman (2014a) and Forst (2014).

¹⁶ Buchanan 2002; Christiano 1996; Wellman 1996.

¹⁷ Buchanan 2010; Buchanan and Keohane 2006; Erman 2016, 32; Valentini 2012.

¹⁸ Buchanan 2010, 82; Erman 2016, 30.

As Rawls rightly points out, we need to know about the *nature* of the object that is supposed to be regulated by specific normative principles in order to properly theorize about those principles.¹⁹ In other words, we need to characterize the object's core properties: insofar as normative principles are supposed to regulate the conduct and structure of a practice, this practice restricts what the principle may be, such that any candidate principle must satisfy a condition of applicability.²⁰ Importantly, though, this *ontological* claim about how principles are tied to a practice should not be conflated with the *epistemological* claim that we must carefully and systematically interpret this practice and gain deep knowledge of its nature, its aim and purpose according to the participants, and so on, in order to theorize the appropriate principles for it (such a conflation is made by proponents of practice dependence and political realism).²¹ First, we may gain sufficient knowledge about applicability without such robust interpretive methodology; secondly, if we come up with a principle that turns out to be non-applicable, it is an open question whether we should get rid of the principle or the practice.²²

Using a function-sensitive approach, the concept of political legitimacy must be broad enough to be applicable to a wide range of functions apart from decision making, but narrow enough to exclude types of power that are not properly regulated by principles of political legitimacy but are better addressed by other normative political principles or ideals. Therefore, rather than the 'right to rule', I use the term 'political legitimacy' to mean 'the right to exercise political power'. By political power I mean power exercised in the public domain – the domain in which collective action co-ordination and problem solving take place as well as the pursuit of common social goods. The obligations associated with this right will depend on what function the principle is supposed to regulate.

The next important conceptual question is what kinds of entities (agents and institutions) fall under this concept of political legitimacy and thus be potential subjects of principles of legitimacy. It seems reasonable to presume that no object that exercises power in the global public domain would constitute such a candidate. Even on a broad understanding, two features stand out as important. First, it seems plausible to hold onto the requirement that public power is exercised in a *purposeful* way, that is, that it is not the result of unintended patterns of behaviour. Hence, objects of the concept of political legitimacy must be agent centric²³ because if entities do not act intentionally, affected subjects are not able to hold them to account, and if accountability is not possible, the concept of legitimacy is not applicable.²⁴ Secondly, their exercise of power has to be *systematic*. For while the legitimate regulation of public power calls for common legal and political arrangements, we cannot establish an institution as soon as, for example, an agent exercises power over another agent. Legal and political institutions have a relatively stable and sluggish structure.²⁵

In sum, according to the conceptual apparatus utilized here, entities (agents or institutions) that exercise systematic and purposeful power in collective action co-ordination, collective problem solving or in the pursuit of common social goods are proper subjects of principles of political legitimacy in global governance. Within this conceptual framework, the function-sensitive approach assumes that the content and justification of principles of political legitimacy are dependent on (a) the different *functions* in global governance and (b) the *relationship*

¹⁹ Rawls 1971, 29.

²⁰ Beitz 2014, 227; Erman 2016, 35.

²¹ See, e.g., Ronzoni 2009; Rossi 2012; Sangiovanni 2008; Sangiovanni 2016.

²² Erman and Möller 2015b.

²³ See Hurrell and Macdonald 2012.

²⁴ Erman 2016, 35.

²⁵ Erman 2014b; Erman 2016, 36.

between these functions. Moreover, the approach is best described as ideal-theoretical, not because the suggested principles are theorized under an idealized assumption of ‘full compliance’ or because they constitute a kind of ‘end-state theory’.²⁶ Nor is it because they are ‘utopian’ in the sense of working without feasibility constraints.²⁷ Rather, they are ideal-theoretical in the sense that they are theorized under permissive feasibility constraints, according to which principles of legitimacy must be *compatible* with the basic features of human nature as we know it and be possible to *achieve* from the status quo.²⁸ Apart from these feasibility constraints, the defended account adopts the accessibility constraint that the suggested principles are desirable and worth pursuing only if they are not morally unapproachable in the sense of involving extreme moral costs.²⁹

Competing Accounts

The statement above about the absence of function-sensitive approaches to political legitimacy needs qualifying, since there have been proposals that stress the importance of certain functions of global governance institutions.³⁰ Perhaps most influentially, Allen Buchanan and Robert Keohane have argued that global governance institutions are essential because they perform valuable coordinating functions, such as creating norms and information that enable key actors to coordinate their behaviour in mutually advantageous ways. They argue that political legitimacy becomes crucial because global governance institutions can only perform these functions successfully if those addressed by their rules regard them as binding, and others within their domain of operation support (or at least do not interfere with) their functioning.³¹

This focus on functions, however, does not constitute a function-sensitive approach of the kind proposed here. For while the *importance* of certain functions *justifies* the call for political legitimacy on this account, political legitimacy as such is not sensitive to functions. In other words, the *specific* properties of different functions do not themselves affect the content and justification of principles (or criteria) of legitimacy. By contrast, using the approach suggested here, this function-sensitivity creates space for a pluralist view of, for example, inclusion criteria and uptake conditions, allowing us to incorporate different criteria and uptake conditions depending on the function at hand. This is a strength vis-à-vis accounts that focus only on one inclusion criterion (most popularly the all-affected interests principle) independent of what kind of political practice the principle of legitimacy is intended to regulate.³² It is also a strength compared to accounts that either focus on one uptake condition – most commonly the duty to comply among philosophers³³ – or do not incorporate or even discuss any uptake condition at all (most empirically informed political theorists).

Buchanan and Keohane undertake no differentiated analysis of uptake conditions. Instead, they either mention the duties of compliance and non-interference in a lexical order such that ‘we should support or at least refrain from interfering with legitimate institutions’,³⁴

²⁶ Rawls 1999.

²⁷ Cohen 2008.

²⁸ Erman (2016, 57); see also Buchanan (2004); Gilabert and Lawford-Smith (2012). These feasibility constraints are best interpreted in terms of a *negative* epistemological proposition such that the ideal must not be proven incompatible with the basic features of human nature as we know it, and not be proven unachievable from the status quo (Erman 2016, 31, n. 3).

²⁹ Buchanan 2004.

³⁰ Buchanan and Keohane 2006; Buchanan 2013; Macdonald 2016.

³¹ Buchanan and Keohane 2006, 408.

³² E.g., Dryzek 2006; Macdonald 2008; Stevenson and Dryzek 2012.

³³ E.g., Tasioulas 2010; Tasioulas 2013.

³⁴ Buchanan and Keohane 2006, 407.

or non-lexically such that we have content-independent reasons to follow the rules or not interfere with others' compliance with them.³⁵ And with regard to inclusion criteria, they define legitimacy in the case of global governance institutions as the right to rule, where 'people subject to those rules' have content-independent reasons to support them or not interfere.³⁶ In other places, however, the inclusion criterion is expressed as an all-affected principle rather than an all-subjected principle, in terms of 'those affected by the rules' and those 'affected by global governance institutions'.³⁷ But it is never clear whether these criteria are used interchangeably or if they are applicable in different contexts.

Another important difference between the suggested function-sensitive approach and Buchanan and Keohane's function-focused account concerns the *scope* of political legitimacy. While their standard of legitimacy is only applicable to global governance institutions, the account developed in this article – consisting of five principles – is applicable to other entities (actors or agents) too. As we saw above, what matters to become a proper subject of principles of legitimacy is whether power is exercised purposefully and systematically in the public domain. From this point of view, it might be the case that none of the existing global governance institutions is appropriate for reform; political legitimacy may demand the establishment of *new* institutional arrangements. Contrast this with Buchanan and Keohane's practice-dependent view that the actual workings of existing institutions constrain the regulative principles.³⁸ From the ideal-theoretical perspective adopted here, there is no justification for why current institutions should have a privileged position in determining what political legitimacy requires. Indeed, it may even turn out that some of them should be abolished from the standpoint of legitimacy. We have to carefully separate the claim that political legitimacy may *require* common institutions from the claim that principles of political legitimacy are only *applicable* to current institutions. The latter view just leaves non-institutionalized exercises of power out of reach for legitimacy. By contrast, according to the framework adopted here, any purposeful and systematic exercise of power in the public domain calls for legitimacy, whether it is institutionalized or not.

Of course, in the world as we know it, political power is most often exercised by institutions, which based on the broad definition adopted here are composed of persistent and connected sets of rules that prescribe behavioural roles, constrain activity and shape expectations.³⁹ However, such behaviour need not be institutionalized. It may comprise a series of actions by an agent, individual or collective, pursuing some goal guided by certain political attitudes, for example a civil society actor pushing for more transparency in the public domain in relation to a specific policy issue. This may be pursued purposefully and systematically, yet not in accordance with a persistent set of rules that prescribe behavioural roles and constrain the action.

I suspect that one reason why Buchanan and Keohane focus on existing global governance institutions is because they propose a non-ideal standard of legitimacy. This becomes evident when they argue that theories of global democracy are flawed as a standard for the political legitimacy of global governance institutions *because* they are unrealistic.⁴⁰ However, it is never clear what feasibility constraints their own proposal is theorized under. If it is a non-ideal proposal, it might well be the case that it is compatible with the account developed here.

³⁵ Buchanan and Keohane 2006, 411.

³⁶ Buchanan and Keohane 2006, 411.

³⁷ Buchanan and Keohane 2006, 426, 415.

³⁸ See also Macdonald 2016; Sangiovanni 2008.

³⁹ Keohane 1988, 383.

⁴⁰ Buchanan and Keohane 2006, 416.

KEY PRINCIPLES OF THE POLITICAL LEGITIMACY OF GLOBAL GOVERNANCE

Let us now move to the principles defended within this function-sensitive framework. This section discusses what are often considered the six main functions of global governance in relation to political legitimacy: (1) problem identification, (2) agenda setting, (3) decision making, (4) implementation, (5) enforcement and monitoring (6) and evaluation. I begin by demonstrating in what sense (1) and (2) are essential but not distinctly important for an account of political legitimacy. Thereafter, I analyse properties (3)–(6) and develop an account of political legitimacy consisting of five key principles. In the final subsection, I discuss the various inclusion criteria that the principles accommodate as well as their different uptake conditions.

Problem identification and agenda setting are both crucial functions for any political decision-making process. Problem identification involves recognizing a certain issue or phenomenon as a problem that requires political attention. The problem may be formulated and articulated by a range of different actors and institutions, such as concerned individuals, political parties, public or elite opinion, the mass media and interest groups. In order for the problem to become an object of decision making, however, it must compete for space on the political agenda. Key actors in agenda setting are public officials, think tanks, interest groups, political parties and the media.

One could imagine several normative principles that are essential for problem identification and agenda setting, such as the principle of equal respect for everyone's opinions and the principle of equal opportunity for everyone to express their views and thoughts. Even a principle of fair representation and treatment of stances and interests by public institutions seems plausible from the standpoint of legitimacy. However, I argue that we should not treat such principles as *key* principles of political legitimacy because they are generic and thus seem essential to consider for any normative account of global politics or the global order. Hence, even if they are needed in order to *achieve* political legitimacy, they are not *distinctly* important for the content of political legitimacy. Instead, I argue that key principles of political legitimacy should be formulated and justified in relation to the four functions of (3) decision making, (4) implementation, (5) enforcement and monitoring and (6) evaluation. These are analysed under two subheadings – decision functions (3) and post-decision functions (4–6).

I first present the five principles constituting the proposed account, and then specify what functions they are intended to regulate and offer justifications for their form and content.

P1. *The equal say principle:* All agents that are subjected to an entity's laws must have an equal say in the decision making about its basic form and the overarching societal goals and aims.

P2. *The principle of public legitimacy:* All agents that are significantly affected by an entity's policies must have their fundamental interests protected and promoted in a public way in the decision-making process.

P3. *The principle of agency integrity:* All agents and institutions involved in the overall political process must, independent of their functional role, fulfil a match between their justifying aims and their performance.

P4. *The principle of impartiality:* All agents and institutions realizing law and policy must exercise public power impartially by treating equal cases equally and affected individuals alike irrespective of personal relations, ethnicity, gender, political affiliations or beliefs.

P5. *The principle of basic legitimacy:* All persons whose fundamental interests are significantly affected by the exercise of public power must not have their basic human rights violated and may demand accountability for alleged violations of these rights.

A first thing to note is that the principles taken together regulate both the ‘input’ side of public power, that is, *access* to public power (P1, P2 and P5) and the ‘output’ side, that is, the *exercise* of public power (P3 and P4). This is a strength vis-à-vis accounts in the literature on political legitimacy in global governance that either tend to theorize one of them or treat them as two different kinds of legitimacy (input legitimacy and output legitimacy, respectively), thereby neglecting their deep interconnectedness for a full grasp of what political legitimacy requires. Secondly, whereas P1–P4 can be applied to collective agents, P5 is only applicable to individuals. Thirdly, the inclusion criteria of the three principles that specify the conditions of inclusion (P1, P2 and P5) differ. Whereas P1 takes the form of an all subjected principle, P5 takes the form of an all-affected interest principle. The final principle with an inclusion condition – P2 – is a kind of mixture of the other two: although affectedness is central, the principle is fundamentally more similar to the all subjected principle, as it is targeted at *agency* rather than interests.

I return to the question of inclusion criteria below, but I first connect the above principles to the regulation of decision and post-decision functions to get an overall picture of the account.

Decision Functions and Key Regulative Principles

Consider first decision functions, which are what most accounts of political legitimacy have focused on in normative political theory. Once problems have been identified and have made it onto the various agendas, laws or policies must be formulated in order to address them. Law and policy proposals are adopted in a variety of ways through decision-making procedures. Examples of decision-making entities in global governance are the Board of Directors of the Bank of International Settlements, NATO’s North Atlantic Council, and the Wassenaar Agreement Plenary. An undertheorized aspect of decision making, which seems relevant for political legitimacy, is the difference between law and policy. This aspect has fallen between two stools in the debate: philosophers tend to theorize about political legitimacy by hypothesizing about international law,⁴¹ whereas more empirically driven political theorists tend to hypothesize about global policy.⁴² However, the distinction between law and policy in relation to political legitimacy is rarely (if ever) addressed. This is unfortunate, since it is far from obvious that the demands of political legitimacy should be the same with regard to decision making on law and policy.

From the standpoint of political legitimacy, there are differences between law and policy that are normatively significant. Generally speaking, laws are more formal than policies, constituting a system of rules that sets out standards, procedures and principles that mandate, proscribe or permit specified relationships between people and institutions, provide methods for ensuring impartial treatment, and proscribe punishment for agents that do not follow the rules of conduct. One could say that these standards, procedures and principles are mainly made to achieve justice in the societal system. By contrast, policies are less formal, often in the form of a statement or document of what is intended to be done in the near or remote future, setting out certain (substantive or procedural) goals that should be achieved. For example, policies may

⁴¹ Buchanan 2010; Christiano 2010; Christiano 2012; Tasioulas 2010; Tasioulas 2013; for an exception, see Buchanan (2013).

⁴² Bäckstrand 2006; Dryzek and Stevenson 2014.

provide private and collective goods. Importantly, though, policies must comply with laws and be formulated and implemented *within* a legal framework. So, while a policy might identify a new law that is needed, it must do so in adherence to existing laws.

Of course, while the law-making body in a domestic (democratic) context is established and authorized by the constituent power ('the people'), which in turn authorizes additional institutions to carry out other functions, law making and policy making in the global public domain are widely distributed, and the ties between different decision-making bodies are loose at best. Moreover, some laws look more like policies (for example, global administrative law), while others are authoritative and binding even without agreement through formalized decision making (for example, customary international law). With this in mind, it seems correct to view differences between law and policy in global decision making in terms of a *continuum*⁴³ rather than in binary terms. However, it would be a mistake to think that these differences do not matter for political legitimacy just because they are complex and sometimes hard to pin down in a global context.

From the standpoint of legitimacy, international law making is more fundamental than global policy making in the sense that it lays out the system of rules that set out standards, principles and procedures for how policies may be formulated. Policies must generally comply with the law and be formulated and implemented within a legal framework (even if this framework is more fragmented in the global domain). For example, treaties are one of the main sources of international law. International organizations, such as the International Labour Organization, are established and maintained by treaties (such as the Philadelphia Declaration), which create the legal framework setting out the basic rules and standards for the organization's policy making.

On the proposed account, four principles regulate decision functions, two of which are applicable to such functions *specifically*: P1 and P2. According to the equal say principle (P1), *all agents that are subjected to an entity's laws must have an equal say in the decision making about its basic form and the overarching societal goals and aims*. Hence, P1 constitutes a robust democratic principle that aims to secure political equality, i.e., equal decision power.

Three points are worth noting here. First, the equal say principle stays neutral with regard to different formal decision rules, for while we are used to individual-majoritarian rule in the domestic context, a variety of voting rules are applied to global governance institutions (weighted, majoritarian, unanimity, etc.). Most importantly, in international law institutions the consensus method dominates.⁴⁴ Secondly, agents may be individual or collective according to P1, such as cases where states are the primary subjects of the laws. Granted, the primary subjects of international law are states in most areas of decision making. But while this may be justified in some cases from a legitimacy standpoint, for example with regard to some trade law, it may be unjustified in other cases, such as international human rights law. Concerning the latter, individuals, as the fundamental rights bearers, are increasingly acknowledged as the law's primary subjects. The question of supranational law is relevant in this context, which thus far has taken the form of common tribunals or supranational legal frameworks like the one set up by the European Union. Thirdly, moving to the recipient side of legitimacy, which concerns those over whom public power is exercised, the uptake condition for the equal say principle is a *duty to comply* (more on this below).

The second principle that regulates decision making specifically on the proposed account is the principle of public legitimacy (P2), which states that *all agents that are significantly affected by an entity's policies must have their fundamental interests protected and promoted in a public*

⁴³ See Abbott and Snidal 2000.

⁴⁴ Erman 2016, 46.

way in the decision-making process. In this case too, agents may be either individual or collective. However, in contrast to the equal say principle (P1), the principle of public legitimacy (P2) is targeted at policy making rather than law making. The *publicness* condition is essential here. In the theoretical literature on global governance, publicness and transparency are often considered to be crucial for legitimacy. However, they are often discussed in relation to implementation and enforcement, or as something that could make up for the loss of democratic control in global governance. But as Christiano has pointed out, publicness is also important for affected parties in the decision-making phase in order to *see* justice be done – that is, to see that they are fairly treated according to some procedure.⁴⁵ Moreover, if we move to the recipient side, the uptake condition for the principle of public legitimacy is a *duty not to interfere*.

The equal say principle (P1) and the principle of public legitimacy (P2) are both justified through the principle of equal respect for autonomous agency, which requires that we regard others as autonomous sources of normative claims in a justificatory practice such that each person is an authority in the space of reasons.⁴⁶ In contexts where political power is systematically and purposefully exercised, this idea of agency as the exercise of autonomy requires that one is the author of the system of laws to which one is supposed to comply – by being a justificatory equal through equal participation in the legislative procedure – and that one is an authority in the shaping of one's life by having one's fundamental interests promoted.

Apart from these two specific decision-regulating principles, two additional principles are applicable to decision functions but are *general* in the sense of being applicable to post-decision functions too (see below). The first is the principle of agency integrity (P3), which states that *all agents and institutions involved in the overall political process must, independent of their functional role, fulfil a match between their justifying aims and their performance*. This principle is a revised version of Buchanan's idea of institutional integrity, but with wider scope.⁴⁷ Being applicable to all functions, P3 is central to highlighting an *efficacy* dimension of political legitimacy that should not be neglected. For while an agent or institution may perform justifiably in relation to other agents and institutions – for example by fulfilling the principle of public legitimacy (P2) – it may execute its function poorly. And if this is the case, it will lose credibility and hence sociological legitimacy, which is essential for its functioning.

The second general principle is the principle of basic legitimacy (P5), which holds that *all persons whose fundamental interests are significantly affected by the exercise of public power must not have their basic human rights violated and may demand accountability for alleged violations of these rights*. In contrast to the other principles of the account, this principle is the only one that is applicable solely to individuals. Moreover, similar to the principle of public legitimacy (P2), the uptake condition is a *duty not to interfere*.

If the principle of agency integrity (P3) primarily aims to secure efficacy, the principle of basic legitimacy (P5) aims to guarantee minimal *justice* in the exercise of public power. Hence, in accordance with the justice approach to political legitimacy, the principle of basic legitimacy secures the fair distribution of burdens and benefits among those involved.⁴⁸ Similar to the justice approach, moreover, it is directed at minimal standards rather than full justice, according to which entities are considered legitimate when they protect certain fundamental rights.⁴⁹

⁴⁵ Christiano 2008.

⁴⁶ See Forst (2011). However, this is just *one* way of grounding P1 and P2. I believe many other basic egalitarian principles will be able to ground them too.

⁴⁷ Buchanan 2013.

⁴⁸ Dworkin 2000; Rawls 1971; Tomasi 2001.

⁴⁹ Buchanan 2010, 81.

However, my account differs from the justice approach in that justice is *not sufficient* for political legitimacy since the principle of basic legitimacy (P5) on its own would not generate political legitimacy. It does so only together with the other principles.⁵⁰

Now, it might be objected that P5 is too thin from the standpoint of justice, since it focuses on *not violating* basic human rights, which presumably would be primarily civil and political rights and a minimal threshold of socio-economic rights, rather than *promoting* the full range of human rights and reducing severe socio-economic inequalities globally. While this observation is correct, this article proposes an account of political legitimacy, not global justice. Political legitimacy is foremost about the *regulation* of public power, responding to the question of who exercises power over whom, rather than the *redistribution* of primary goods, responding to the question of who owes what to whom.⁵¹ Furthermore, recall the accessibility constraint on my ideal-theoretical project, according to which the suggested principles are only desirable and worth pursuing if the moral costs are not too high. Hence, we can well imagine situations in which the cost of striving to fulfil them would simply be too costly in terms of injustice such that our concerns for global justice would trump our concerns for political legitimacy.

Post-Decision Functions and Key Regulative Principles

Most international relations theorists have focused on post-decision functions in theorizing political legitimacy: implementation, enforcement and monitoring, and evaluation. With regard to *implementation*, executive agents and institutions implement laws and policies, for example, by adopting rules and regulations, providing services and products, and so on. Typical implementation bodies in global governance are the secretariats, such as the secretariats of the Council of Europe, the Organisation for Economic Co-operation and Development, and the Association of Southeast Asian Nations. The United Nations Secretariat, for example, is responsible for implementing the decisions of the General Assembly, the Economic and Social Council, and the Security Council.

Moreover, *enforcement* in global governance typically refers to rewarding compliance and threatening sanctions and penalties for non-compliance. Judiciary or juridical institutions such as the International Criminal Court interpret, evaluate and apply international law as well as ensure equal justice under law. Enforcement of international law is often coercive, such as the actual or threatened imposition of costs to promote compliance. While most costs are material, such as economic sanctions, diplomatic means in the form of social pressure and shaming are also used. In contrast to the domestic case, however, enforcement institutions are decentralized. Supranational enforcement authorities, such as the International Court of Justice, are still rather weak and lack compulsory jurisdiction.⁵² Enforcement also includes adjudication, which has become an important method of dispute settlement in international politics after the Second World War, involving an impartial third-party tribunal (an arbitral tribunal or international court). What distinguishes adjudication from alternative dispute resolution such as mediation or

⁵⁰ Of course, when we make legitimacy assessments about an actual global governance arrangement the suggested principles may conflict in such a way that we have to balance them against one another. However, this does not constitute a criticism of my theory (or any ideal-theoretical proposal), but concerns the problem of trade-offs that appear when we attempt to realize several possibly competing principles simultaneously. One might think that under non-ideal conditions – such as when we assess existing international organizations – the second-best option would be to realize all principles as much as possible. However, as stressed by Robert Goodin, the general theory of second best teaches us that such intuitions are in error (Goodin 1995, 54).

⁵¹ Erman 2016, 58.

⁵² Thompson 2013, 503–4.

conciliation is the legally binding nature of the outcomes.⁵³ Moreover, with regard to *monitoring*, examples of monitoring bodies in global governance include the Organization of American States' Inter-American Commission on Human Rights and the judicial chambers of the International Criminal Court.

Evaluation, finally, characteristically involves examining whether the policy has solved the problems identified and accomplished its goals, and assessing the costs and benefits of the policy and its unintended and indirect effects. Numerous agents and institutions may be involved in evaluating policies, such as interest groups, academia, think tanks, media, non-governmental organizations (NGOs) and outside evaluators. In global governance, civil society actors often perform this function by undertaking studies to document the consequence of various global governance policies, such as the Structural Adjustment Policy Review Initiative.⁵⁴

Concerning these post-decision functions, the principles of agency integrity (P3) and basic legitimacy (P5) are of course crucial here too to secure efficacy and minimal justice. Apart from these general principles, one additional principle is applicable: the principle of impartiality (P4) says that *all agents and institutions realizing* [implementing, enforcing, etc.] *law and policy must exercise public power impartially by treating equal cases equally and affected individuals alike irrespective of personal relations, ethnicity, gender, political affiliations or beliefs.*⁵⁵ The impartiality condition is essential for political legitimacy, yet it is seldom discussed in the current literature on legitimacy and democracy in global governance.⁵⁶ Insofar as it is brought up for scrutiny, it is in the empirical political science literature rather than in normative political theory.⁵⁷

Empirical studies have shown that social capital, defined as generalized trust in other people and access to social networks, is determined by the quality of government institutions rather than the other way around.⁵⁸ Moreover, it has been demonstrated that democracy in terms of equal access to power (political equality) is not sufficient for good governance. Since the equal access to power might serve only the interests of the few, and has no means to regulate the exercise side of power, it cannot prevent corruption, clientelism, favouritism and patronage.⁵⁹ Hence, even if equal access to power would secure impartiality on the input side, it does not entail impartiality on the *output* side, that is, in how authority is exercised. Yet output impartiality is shown to be one of the most important factors for explaining good governance.⁶⁰ Empirical scholars have found that impartial and effective executive institutions have a larger effect than representational institutions on how satisfied citizens are with their democratic government.⁶¹ Here normative and sociological notions of political legitimacy seem to coincide or at least overlap, since impartiality in the exercise of power is not only effective by enhancing trust; it is also essential for normative reasons: everyone in a democratic polity is a member on equal footing and should therefore be treated impartially in equal cases.

With all main functions on the table, a practical worry might arise that the proposed distinction between decision functions (law and policy making) and post-decision functions

⁵³ Romano et al. 2013

⁵⁴ Scholte 2004, 219–20.

⁵⁵ See, e.g., Barry 1995; Habermas 1996.

⁵⁶ Compare with the justice literature and moral theory in general, where impartiality plays a large role.

⁵⁷ Rothstein and Teorell 2008.

⁵⁸ Delhey and Newton 2005; Rothstein 2005.

⁵⁹ Diamond 2007; Diamond 2010.

⁶⁰ Rothstein and Teorell 2008; Rothstein and Teorell 2012.

⁶¹ Dahlberg and Holmberg 2014.

(implementation, enforcement, monitoring, and evaluation), upon which my account relies, is too blurred in today's globalized world for the account to have any practical import. To illustrate this, take for example international courts and global administrative law. There is a growing literature on the legitimacy problems following from law making by international courts.⁶² Such courts do not 'happen' to act beyond their authorization and competences; rather, they are open 'by design' to leave room for independent law making.⁶³ Likewise, there is an emerging field of global administrative law, constituting a regulatory 'space' that transcends interstate relations, which calls for new legitimacy mechanisms.⁶⁴

While both kinds of entities are engaged in law making in some sense, this is not law making in the robust sense discussed here in relation to political legitimacy. On the defended account, it would be more appropriate to call it 'mandated law making' or 'rule alteration'. International courts and global administrative bodies make rules within the framework of, for example, the treaty that established the institution. While they have some kind of independence, they are constrained so that they effectively and genuinely pursue the aims and realize the principles established by the principal parties.⁶⁵

Criteria of Inclusion and Uptake Conditions

As noted above, the three principles that regulate the *input* side of public power incorporate inclusion criteria: the equal say principle (P1), the principle of public legitimacy (P2) and the principle of basic legitimacy (P5). Whereas P1 is a version of the all subjected principle, P5 is a version of the all-affected interests principle, and P2 is a mixture of the two. In the debate on the boundary problem in democratic theory, which focuses on who should be included in the *demos* or in the democratic decision-making process, the all subjected principle and the all-affected interests principle are usually considered to be competing inclusion criteria. However, on the proposed view they play different roles in a *unified* account of political legitimacy.

Several understandings of 'subjected to' have been offered in discussions of the all subjected principle. On the proposed equal say principle (P1), 'subjected to' has a twofold form. It has a 'legal' interpretation in that those subjected to the laws have a legal obligation to comply with them.⁶⁶ But it also has a 'coercive' interpretation: those subjected to the laws are those coerced by them, physically, through force or threats of disciplinary action, as well as socio-psychologically, through symbolic processes of socialization.⁶⁷ While neither of the two conditions is necessary, each is sufficient. Consequently, I disagree with Arash Abizadeh that the legal interpretation of the all subjected principle should be rejected just because it is 'perverse' in the sense that it may allow political authorities to exercise coercive power 'without imposing legal obligations'.⁶⁸

So why does the equal say principle take the form of an all subjected principle rather than an all-affected interests principle, thus including all who are subjected instead of all whose interests are significantly affected?⁶⁹ Despite its normative attractiveness, I argue that the all-affected

⁶² von Bogdandy et al. 2010.

⁶³ Follesdal 2016.

⁶⁴ Kingsbury, Krisch, and Stewart 2005.

⁶⁵ Christiano (2015); Erman (2016, 54); however, see Alvarez (2005, 2016).

⁶⁶ Owen 2012.

⁶⁷ Abizadeh 2012; Smith 2008.

⁶⁸ Abizadeh 2012, 878, n. 25; Erman 2016, 46.

⁶⁹ There are of course as many versions of the all-affected interests principle as there are contestations about how best to interpret 'significantly affected' as well as about whether the principle should refer to those 'possibly affected' or those 'actually affected' (Goodin 2007; Owen 2012). But these internal disputes are not of immediate

interests principle is ill fitting as a criterion of rightful inclusion as part of a principle of *democratic* legitimacy, which is what the law-making function requires on the defended account. For sure, it is often claimed that the all-affected interests principle is fundamentally egalitarian precisely because it counts all interests equally, and equal political power is the cornerstone of democracy.⁷⁰ However, it is not clear how it is able to take us from a conception of moral equality in terms of counting all interests equally, to political equality in terms of equal decision power. I thus agree with Abizadeh that there seems to be ‘no intrinsic connection between effects on one’s interests in general and a right of democratic say’, such that an effect on one’s interests would ground a right to democratic decision-making power.⁷¹ Indeed, this does not imply that it cannot intrinsically ground, say, a moral right to justification or a right to due consideration – as we will see below – but this is not our concern with regard to law making, which is what the equal say principle (P1) is supposed to regulate.⁷²

By contrast, the ‘all subjected’ form of P1 is fitting for regulating law making because it is able to capture the idea of autonomy as *self-rule* underpinning democracy, which says that we should only comply with the system of laws that we ourselves have authored. While having one’s interests affected need not undermine autonomy as self-rule, being coercively and/or legally subjected does. Moreover, the democratic legitimacy of law making is about the (equal) *authorization* of public power to form our overarching societal goals and aims, which requires subjects as (equal) *agents* rather than subjects as bearers of interests, even if agents are bearers of interests too.⁷³

That said, it is precisely because the all-affected interests principle may ground a moral right to due consideration that it is suitable as a criterion of inclusion with regard to the principle of basic legitimacy (P5), the purpose of which is to secure minimal justice in the exercise of public power by demanding that all persons whose fundamental interests are significantly affected by it do not have their basic human rights violated. With the purpose of protecting individuals from basic human rights violations, the all-affected interests principle is more appropriate than the all subjected principle, since one may be the victim of systematic domination through the exercise of public power without being a legal subject with the right to participate in the law-making process.

Finally, the principle of public legitimacy (P2) accommodates a criterion that combines the all subjected and all-affected interests principles in the sense that it focuses on *affectedness*, but where affectedness is targeted at *agency* rather than interests. The primary aim of P2 is to secure the equal consideration of every *agent* affected by policies by publicly protecting and promoting her fundamental interests in the decision-making process. It thus has a broader application than the equal say principle (P1) since it regulates policy making rather than law making. The idea underpinning this inclusion criterion is twofold. First, it is assumed that principles of political legitimacy regulate the relationship between agents and institutions rather than interests and institutions. In this regard, political subjects as *affected agents* are supposed to live with the decisions made and adapt to their consequences. Secondly, it is assumed that an important way to protect these agents in the decision-making process is to publicly guard their fundamental interests.

Uptake conditions are also connected to the input side of public power, that is, access to public power. Hence the same principles that accommodate inclusion criteria (P1, P2 and P5)

(*F* note continued)

interest here, since the main concern is how the general structure of the principle fits with a principle of legitimacy regulating law making.

⁷⁰ Beitz 1989; Goodin 2007.

⁷¹ Abizadeh 2012, 878; cf. Owen 2012.

⁷² Erman 2016, 48, n. 20.

⁷³ Saunders 2011, 280–81.

TABLE 1 *Summary of the Argument*

Principles of legitimacy	Decision functions		Post-decision functions			Uptake conditions	Criteria of inclusion
	Law making	Policy making	Implementation	Enforcement and monitoring	Evaluation		
P1. The equal say principle	Applicable					Duty to comply	All subjected principle
P2. The principle of public legitimacy		Applicable				Duty not to interfere	All affected principle
P3. The principle of agency integrity	Applicable	Applicable	Applicable	Applicable	Applicable	No uptake condition	
P4. The principle of impartiality			Applicable	Applicable	Applicable	No uptake condition	
P5. The principle of basic legitimacy	Applicable	Applicable	Applicable	Applicable	Applicable	Duty not to interfere	All-affected interests principle

also, by their very structure, include uptake conditions. Principles that regulate the input side have a two-way form: in the exercise of public power, the affected/subjected parties or their fundamental interests *feed into* the decision-making process in one way or the other. As shown in Table 1, the equal say principle (P1) has a more demanding uptake condition than the principles of public legitimacy (P2) and basic legitimacy (P5), requiring a duty to comply rather than merely a duty not to interfere. There are two reasons for this. The first pleads, again, to the idea of autonomy as self-rule underpinning democracy: people should abide by laws they themselves have co-authored. In the case of P1 this means not that people must co-author every single law, but that they have decision power over the legal system *as a whole* by influencing its basic form and the overarching societal goals and aims.

The second reason evokes the differences between law and policy discussed earlier. Even if these are best seen in gradual rather than binary terms empirically, such that assessments and judgements have to be made in individual concrete cases, it makes sense to tie laws to a duty to comply and policies to a duty not to interfere. Laws set out standards, procedures and principles in order to realize overarching societal goals and aims. If we did not have a duty to comply, it would not be possible to break a law. If laws cannot be broken and subjects punished for it, upholding a legal system would be unmanageable. In contrast, we cannot break a policy. Policies usually provide guidelines, for example, for providing private and collective goods, and it makes sense that we should not interfere with policy making as long as policies comply with laws and are formulated and implemented within a legal framework.

Similar to the principle of public legitimacy (P2), the principle of basic legitimacy (P5) also demands a duty not to interfere rather than a duty to comply. Insofar as the principle is fulfilled by entities exercising public power – such that basic human rights are not violated – it makes sense not to interfere with their workings. However, to comply with their decisions seems way too strong from the recipients' point of view, since they have not been part of the exercising of public power.

As mentioned at the outset, a function-sensitive approach assumes that the content and justification of principles of political legitimacy are dependent on (a) the different *functions* in global governance and (b) the *relationship* between these functions. Table 1 summarizes the analysis of the first aspect, while the next section addresses the second aspect.

AUTHORITY AND THE RELATIONSHIP BETWEEN FUNCTIONS

The second aspect of the function-sensitive approach concerns how political legitimacy depends on the *relationship* between functions. A central feature of the suggested account is that it combines two kinds of rightful authority: *authorized* entities (agents or institutions) and *mandated* entities (agents or institutions). A decision-making entity is authorized insofar as it fulfils the equal say principle (P1). This means that even if an entity produces policy rather than law, it must be *established* and *maintained* through P1 since its policies are supposed to be formulated within the limits of the law. Mandated entities, for their part, have been *delegated* public power by authorized entities. Mandated entities have authority with regard to implementation, enforcement, monitoring and evaluation. The bond between authorized and mandated entities, I argue, creates a justificatory *link* that is essential for political legitimacy, since it establishes an important justificatory *hierarchy* between functions (and thereby between authorities). The constituent power is the main normative source of political legitimacy – in my account those agents subjected to the laws in line with the equal say principle (P1) – as it authorizes law-making entities, which in turn have supremacy over other entities and lend them legitimacy through delegation.

To illustrate this justificatory link, consider an international organization such as the World Trade Organization (WTO). Even if the WTO fulfils a number of regulative principles important for political legitimacy both internally and externally, we cannot draw conclusions about its legitimacy without knowing how it was established. Or consider international courts; even if they fulfil principles of legitimacy in their performance – for example by realizing the objectives of the treaty in question and securing accountability, transparency and legality⁷⁴ – their adjudication would not be legitimate unless the law that was interpreted and applied sprang from a legitimate source. Hence, the suggested justificatory link between functions takes into account the importance of not having what Buchanan calls ‘tainted origins’.⁷⁵

Acknowledging the justificatory link between authorized and mandated entities sheds light on problems with the current literature on, for example, global climate governance, in which legitimacy is often claimed to be strengthened through network governance, that is, the regulation arising from networks of non-state actors such as social movements, NGOs, corporations and private actors.⁷⁶ I argue that whether such networks should be considered legitimate depends on what function they are created to perform, and how they were ‘assigned’ public power.

As with ideal-theoretical proposals in general, the suggested account of political legitimacy is far from being even remotely realized in current global governance. However, its main purpose is to serve as a normative device for thinking about legitimacy from a long-term perspective, for assessing and criticizing the current state of affairs, and as a guide for constructing non-ideal principles. One reason why the function-sensitive approach is suitable for the two latter tasks is because it offers a *differentiated* standard and therefore is equipped to provide a multifaceted analysis of international organizations, which usually have a range of functions, agents and institutions. Consider, for example, the interstate bodies (such as ministerial councils) and supranational bodies (such as secretariats) of an international organization, which have very different decision-making powers.⁷⁷

⁷⁴ Follesdal 2014; Follesdal 2016; Squatrito and Langvatn 2015.

⁷⁵ Buchanan 2013, 188–89.

⁷⁶ Bäckstrand 2006; Bäckstrand et al. 2010.

⁷⁷ Hooghe and Marks 2015.

On such a differentiated analysis, it becomes clear how the five suggested principles may work simultaneously and overlap in interesting ways, and how they may be used to detect *specific* legitimacy problems, for example, by criticizing certain bodies within an international organization. For instance, one key function of the WTO is dispute settlement (including bodies such as the Dispute Settlement Body, the Appellate Body and the WTO Secretariat) for handling the violation of trade rules and agreements signed by representatives of its members. Another key function is to oversee and manage the implementation and administration of the covered agreements. With regard to these functions, relevant entities must fulfil the three principles of agency integrity, impartiality and basic legitimacy (P3–P5). However, the WTO is also in important respects a decision maker, since it sets out rules of trade policy and establishes a policy framework for all members.⁷⁸ Hence, the principles regulating decision functions also apply. Insofar as the primary agents subjected to the laws establishing the framework of WTO rules are states, the equal say principle (P1) would primarily require that (democratic) states, rather than individuals, have an equal say about the WTO's basic form and overarching societal goals and aims. However, with regard to policy making, insofar as agents (for example, individuals, marginalized groups) are significantly affected by the policy decisions, they must have their fundamental interests publicly protected and promoted in the decision-making process, in accordance with the principle of public legitimacy (P2).⁷⁹

To demonstrate how the function-sensitive account differs, compare these conclusions to other proposals for how to regulate global economic institutions such as the WTO. First of all, the conclusions diverge from the common claim that civil society actors, such as NGOs, ought to have an institutionalized and formalized say in WTO decision making to represent people around the world whose fundamental interests are significantly affected by international trade laws.⁸⁰ Consider, for example, civil society approaches and deliberative approaches, which are often stressed as suitable since their focus on democratization through the improvement of the discursive quality of global political processes is fitting for the non-territorial, non-electoral and non-hierarchical characteristics of global politics. Advocates of both approaches often argue that, in order to push global governance towards democratization, civil society actors must have a formal role in the decision-making procedures: their participation must be institutionalized so that they get formal access to the decision-making arenas. Any democratization via civil society involvement requires participation rights for non-state actors and clearly defined rules of collaboration, to govern the interaction between civil society actors and international organizations.⁸¹ In a similar vein, the stakeholder model, which attaches great importance to civil society, is often said to be able to replace electoral and constitutional modes of democratic representation with (non-electoral) stakeholder representation as long as public power is traceable.⁸² But on what grounds should these civil society actors have decision-making power about the WTO's basic form and overarching societal goals and aims? According to the defended account, it would be a gross violation of the equal say principle (P1).

This, of course, does not take away the many important ways in which civil society actors may have an informal role to play in strengthening the political legitimacy of global governance

⁷⁸ Anderson and Hoekman 2006.

⁷⁹ Erman 2016, 53.

⁸⁰ Dryzek 2006; Scholte 2004; Stevenson and Dryzek 2012.

⁸¹ Nanz and Steffek 2008, 14; see also Bäckstrand 2006; Dryzek 2012.

⁸² Macdonald 2008; Macdonald and Macdonald 2010; Seward 2010.

by detecting and identifying global problems related to fundamental interests affected by WTO policy decisions,⁸³ thereby contributing to the fulfilment of the principle of public legitimacy (P2). Indeed, if we look at problems such as global poverty, the ecological threats in an overstressed natural environment and increasing immigration, very few of these were initially brought up by authorized entities. Rather, they were detected and problematized in the global public sphere with help from transnational civil society.⁸⁴ One of the attractive features of the deliberative approach is precisely its emphasis on the role of deliberation in the global public sphere concerned with public affairs.⁸⁵

Compare, further, the conclusions about the WTO following from applying my account with the intergovernmentalist approach (also called the ‘state consent view’ in the philosophical literature) – that is, the normative model that emphasizes the crucial role of national governments in representing their citizens’ interests in global governance. According to this model, political legitimacy is achieved if constitutional norms are generated through a fair process of treaty making among democratic states.⁸⁶ While the conclusion is the same with regard to the WTO, there are very different justifications for this. According to the defended account, this is so because under current conditions, the primary subjects of international trade law are states, not because there is something inherently desirable about states as such in this context. This becomes evident as soon as we move from international trade law to international human rights law, where individuals are the law’s primary subjects. In such a case, democratic intergovernmentalism would not be appropriate, at least not insofar as one finds the equal say principle (P1) convincing. Rather, it seems as if supranational governance structures would be called for, of the kind assumed by models of cosmopolitan democracy.⁸⁷

The ‘Statist’ Objection

Let me conclude this section by addressing the potential worry that the suggested function-sensitive account is too wedded to a nation-state framework, both conceptually and normatively, to be defensible. Conceptually, it might be argued that the account’s functional typology is impossible or highly doubtful because it is largely transferred from the domestic to the global context. Normatively, it might be argued that the five principles cannot be valid globally because they (or rather, some equivalent principles promoting values such as impartiality, political equality, and so on) were initially formulated to regulate domestic public affairs.

To respond to the conceptual concern, it is helpful to distinguish between origin and application. Concepts like ‘decision making’, ‘implementation’, ‘monitoring’ and ‘enforcement’ have most intensely been applied to political activity in a nation-state context. Let us imagine, for the sake of argument, that they even originated in this context, although there is much to indicate that this is empirically false. Even so, why could these concepts not be transportable to contexts outside of where they were originally used? If they could not, it must be assumed that the nation-state is a necessary condition of these concepts, which seems erroneous. As we have seen from the examples given of each function, we witness decision making, implementation, enforcement, monitoring, etc. in current global governance arrangements. Of

⁸³ Eckersley 2007; Scholte 2014.

⁸⁴ Habermas 1996, 381.

⁸⁵ Bohman 2004; Dryzek 2006; Macdonald 2008; Nanz and Steffek 2008.

⁸⁶ McGrew (2002); Christiano (2010, 2012); for a critique, see Patberg (2016).

⁸⁷ Caney 2005; Falk and Strauss 2001; Held 1995.

course, the performance of these functions often takes a different form in the global domain, and involves other kinds of actors. Still, to say that the terms are inapplicable or highly doubtful requires that they do not share sufficiently similar features to be used without constant misunderstandings. However, this does not seem to be the case; not only do public servants and practitioners performing these functions in global governance use these terms, but empirical scholars studying global governance institutions adopt functional typologies similar to the one used here.⁸⁸ They presumably all agree that these functions look quite different in a global setting compared to a domestic one, but not sufficiently different to label them something else. Hence, the assumed domestic origin does not seem to limit the scope or applicability of the suggested functional typology.

Moving from the conceptual to the normative concern, the objection would be that the suggested principles are invalid because the core values they promote – such as political equality, impartiality and the protection of fundamental interests – were initially embedded in principles formulated to regulate domestic politics and could therefore not even be properly understood if they were applied to global politics. To respond to this concern, I utilize the distinction between understanding and justification. One cannot falsify a normative principle on the basis of not understanding it, since not understanding it only says that one does not share the necessary preconditions, in terms of a common life world, for the principle to become intelligible. Consider, for example, the equal say principle (P1). Assume that ‘equal’ in one community is understood in terms of merit, whereas another community understands ‘equal’ in terms of strict equality. Certainly, the possibility of agreement as well as disagreement about the content of the principle is premised on the possibility of systematically being able to translate each community’s utterances. But this prerequisite of successful communication reflects only the *semantic* sense of agreeing on what the principle means. We can agree on this while at the same time disagreeing about the soundness of the principle. Hence, understanding the principle tells us nothing about its validity. The question about the validity of a principle is in practice a matter of justification, that is, whether there are good reasons in support of it.⁸⁹

Therefore, the challenge to my account is not whether the values promoted in the suggested principles have been applied in a domestic context, but whether we have good reasons to support them as principles of political legitimacy for global governance. Hence, rather than complaining that they are potentially similar to properties we usually associate with a nation-state context, one would have to offer *substantial* objections, for example that political equality is not required for legitimate law making, that impartiality is not important in implementation and enforcement, or that agents and institutions may violate basic human rights and still be legitimate.

CONCLUSION

The overall aim of this article has been to draw attention to functions and the relationship between functions in theorizing the political legitimacy of global governance. This has been done by exploring the idea that the content and justification of a principle of political legitimacy may depend on the function that an entity is supposed to perform. The outcome of this exploration has been a sketch of an account of political legitimacy consisting of five regulative principles. The novelty of this function-sensitive account is threefold. First, compared to the justice and democracy approaches mentioned in the introduction, which build their theories on

⁸⁸ Bloodgood 2011; Green and Colgan 2013; Koremenos 2013; Steffek 2013; Tallberg 2015; Tallberg et al. 2013.

⁸⁹ Erman and Möller 2015a, 131–2.

either justice or democracy as a normative basis, the function-sensitive account specifies the precise 'location' of justice and democracy with a unified view. It also demonstrates in what way justice has a broader scope than democracy, since minimal justice is required of all functions (secured by P5).

Secondly, while theories of political legitimacy in political philosophy have typically focused on regulating decision making and therefore centred the analyses on versions of the all-affected interests principle *or* the all subjected principle, and approaches to political legitimacy in more empirically oriented political theory and international relations theory have typically focused on post-decision functions and values such as efficiency, transparency and accountability, the function-sensitive account resists this division of labour. It defends principles regulating both decision functions and post-decision functions and specifies which principles are required in *both* domains (P3 and P5).

Thirdly, due to this comprehensive analysis of functions, the suggested account is equipped to specify the justificatory hierarchy between functions and thus between entities (agents and institutions), ascribing them different normative status (authorized or mandated). To my knowledge, this has not been systematically done in the literature.

Given the complexity of the political legitimacy of global governance, this article has only scratched the surface. Nonetheless, it has taken some initial steps towards a more pluralist understanding of political legitimacy that integrates several basic values and incorporates standards of political legitimacy that are sensitive to, and vary in accordance with, different functions in global politics.

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