

A Theory of Global Governance: Authority, Legitimacy, and Contestation

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Legitimation Problems

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Abstract and Keywords

Political and epistemic authorities in the global governance system often restrain the freedom of constituent members and therefore need to be justified with reference to the impartial pursuit of a shared social purpose. An international authority must therefore develop a convincing legitimation narrative and display a sense of impartiality to be seen as legitimate. The thrust of the argument in this chapter is that the legitimacy of the global governance system is structurally precarious. Two legitimation problems can be identified: a technocratic bias in the justification of authority and the lack of impartiality in the exercise of authority. International institutions often have authority, but lack sufficient legitimacy beliefs.

Keywords: legitimacy, legitimation, legitimation narratives, impartiality, social purpose, technocratic bias, power bias

Political and epistemic authorities in the global governance system often affect the autonomy of addressed governments and non-state actors. Therefore, global governance arrangements with authority need to be legitimated both to governments and to non-state actors. I refer to this as the “authority-legitimation link.” This link has both a normative and an empirical meaning. Normatively speaking, all liberal reasoning agrees that limitations of autonomy for individual actors through rules require justification. This normative insight seems to be shared by almost all social actors. In this regard then, the normative view of political philosophers is backed by social practice. To put it in the words of John Lennon, political philosophers may be dreamers, but they are not the only ones. This chapter argues accordingly that the rise of transnational and

international authority has changed world politics in empirical terms—it has brought the issue of legitimacy and issues of normativity to the fore.

The authority-legitimation link implies that international institutions without the ability to act in absence of complete consensus of member states have no—or at best very few—legitimation needs. As long as the intergovernmental level was restricted to merely developing a *modus vivendi* of interaction, requiring the consent—and serving the interest—of each individual member state, a two-stage process of legitimation was sufficient. The decisions taken beyond the level of the constituent members were legitimated through the (assumed) legitimacy of their representatives. This has changed with the rise of international and transnational authorities. These authoritative institutions now restrain the freedom of constituent members and therefore need to be justified with reference to common goods and normative principles. In this chapter, the legitimation requirements of, and legitimation strategies in, global governance will be discussed. The thrust of the argument in this chapter is that the legitimacy of the global governance system is structurally precarious. Two legitimation problems can be identified: a **(p.63)** technocratic bias in the justification of authority and the lack of impartiality in the exercise of authority.

These legitimation problems trigger a set of causal mechanisms, leading—via increased politicization or counter-institutionalization—to either a decline or a deepening of global governance. I will explore these causal mechanisms theoretically in Chapter 4 and empirically in the second part of the book. The present chapter introduces the distinction between authority and legitimacy, and links the two concepts via the concept of legitimation (section 3.1). On this basis, the impartial pursuit of a shared social purpose is developed as the most important source of empirical legitimacy beliefs. In this view, an international authority must develop an authentic legitimation narrative and display a sense of impartiality to be seen as legitimate (section 3.2). Against this backdrop, the most relevant legitimation narratives are discussed in section 3.3. In section 3.4, it will then be argued that, mainly due to the loose coupling of authorities, most of these legitimation narratives can hardly be utilized for global governance institutions. This leads to a technocratic bias in the justification of inter- and national authority, making them vulnerable in practice to delegitimation efforts. Section 3.5 goes on to identify another systematic legitimation problem of the global governance system that derives from institutionalized inequality and the weak separation of powers: the built-in tendency toward arbitrariness and partiality in the exercise of authority.

3.1 The Authority-Legitimation Link

The close link between public authority and legitimacy is broadly accepted in different pockets of social science. In normative terms, the exercise of authority in general requires justification, which makes, according to Rainer Forst (2011), the right to justification the most fundamental right. Armin von Bogdandy et al.

(2010a) put it similarly from a legal perspective: international public authorities have the legal capacity to restrict freedom, which makes a justification of them necessary. In line with this view, Rodney Barker (2001: 24) suggests empirically that claiming legitimacy—i.e. legitimation—is a defining component of any government. Regarding international organizations (IOs), Dominik Zaum (2013: 8) writes that “international organizations need to engage in legitimation, to justify their roles and practices and ground them in their wider social context.” In general, the exercise of public authority requires legitimation, whereby legitimation refers to the social process through which legitimacy beliefs are produced—this may be well-reasoned justification as well as blunt manipulation. The rise of authority thus “is normally accompanied by the permanent attempt to arouse and nurse the **(p.64)** beliefs in legitimacy” (Weber 2013b: 450, author’s translation). This is what I label the “authority-legitimation link.”

The distinction between “legitimacy beliefs” and “legitimation processes” is important, because it helps to disentangle authority and legitimacy, while still maintaining their close link via the notion of legitimation processes (see Nullmeier et al. 2012). Such a conceptual separation between authority and legitimacy runs counter, however, to a usage in the social sciences, where an understanding of authority is often defined as “legitimate power.” Also in International Relations (IR), many ideas are based on such a close link between legitimacy and authority as to make “legitimate authority” a pleonasm and the two notions virtually indistinguishable (see e.g. Ruggie 2004). The key implication of this view is spelled out bluntly by Hurd (2007: 61): “the phrase ‘legitimate authority’ is redundant.” Similarly, Michael Barnett and Martha Finnemore (1999: 707) see IOs as “autonomous sites of authority” that act independently from the state that created them, and whose influence results from “the legitimacy of the rational-legal authority they embody.” Hooghe et al. (2016: 16) also define authority as “the capacity to make legitimate and binding decisions for a collectivity.”

This fusionist view (“authority is legitimate power”) leads to two counterintuitive implications. First, if legitimacy and authority are two sides of a coin, then the more authority an institution has, the more legitimate it must be. From a normative point of view (external perspective), this is absurd, because only the unconstrained master would enjoy full legitimacy. But it is also problematic from an empirical perspective which looks at internal perceptions of authority, since institutions sometimes acquire new institutional competences without necessarily being seen as more legitimate by all affected actors. Second, the fusionist view does not allow for the distinction between authority holders and institutionalized authority. One may consider, for instance, a specific practice of an authority holder (a specific government) as illegitimate, while still recognizing the authority (the government) in principle. The second objection

against the fusionist view is based on the conceptual need for the possibility of illegitimate authority.¹

In contrast to the fusionist view, legitimacy can most generally be described as the “generalized perception or assumption that the *actions* of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions” (Suchman 1995: 574, emphasis added). The legitimacy of a public authority thus refers to the acceptance of an institution’s activities: the exercise of authority as appropriate among its **(p.65)** constituencies (internal legitimacy) and outside observers (external legitimacy; see Tallberg and Zürn 2018, in preparation). The views and beliefs of these audiences (i.e. constituencies and observers) are seen as the outcome of a process in which, on the one hand, authority holders and other supporters (most often deliberately) seek to make a political institution more legitimate by boosting beliefs that authority is exercised appropriately. This process is called legitimation—the permanent attempt to stimulate and nurse the beliefs in legitimacy, in Weber’s words. It is in this sense that the exercise of public authority is most often accompanied by legitimation narratives of the authority holders. On the other hand, where actors seek to undermine the legitimacy of a political institution, one can speak of delegitimation. Legitimation and delegitimation processes provide the link between authority and legitimacy.

It follows that legitimacy is related to—but not synonymous with—authority. In Suchmann’s definition, legitimacy refers to actions of an entity. Similarly, David Beetham (1991: 3) argues that we call something “rightful or legitimate” if it is “acquired and exercised according to justifiable rules.” These two well-known definitions point to the decisive difference between authority and legitimacy. Both authority and legitimacy are based on the willingness to follow, but the process of recognition applies to different levels (Zürn 2012a). The first level refers to the recognition of an authority as desirable in principle in order to achieve certain goals and common goods. The second level of recognition is about the appropriate exercise of authority. Without first-level recognition, there would be no institutionalization of authority, as well as no pooling of authority or delegation to IOs in the first place. Whereas a commonly recognized authority can advance the common good, it certainly does not always do so. The authority may be a necessary condition for achieving a common good, but it is certainly not sufficient. It is only if the authority is being appropriately exercised in line with the social purpose for which it was created. Whereas the first-level recognition of authority refers to the recognition of the social purpose and the *ex ante* acceptance of capacities, the second-level recognition of legitimacy refers to the practice of exercising authority and the *ex post* acceptance of activities. To exemplify, anarchists in the late nineteenth century questioned all the authorities in many states in Europe (they did not think that the state should have authority at all), while most communists were in favor of a strong state, but questioned the actual regime’s legitimacy (they questioned the specific exercise

of authority). In a nutshell: Legitimacy beliefs involve a judgment about the exercise of an authority. In this sense, the concept of legitimacy is parasitic on the concept of authority. Legitimacy beliefs are formed in an ongoing process of legitimation and delegitimation.

Legitimacy beliefs about and legitimation processes of international and transnational authorities have received little attention for a long time (see (p. 66) Tallberg and Zürn 2018, in preparation, for an overview).² When IR scholars have addressed legitimacy in the context of global governance, the dominant approach to date has been normative. Drawing on political theory, IR scholars have debated the existence of a democratic deficit in global governance, and alternative assessments of the legitimacy of IOs. The focus has been on the normative standards that should be used when evaluating IOs' right to rule—most often democracy—and the extent to which these institutions meet these standards—i.e. to what extent they are worthy of recognition (*Anerkennungswürdigkeit*, in the language of Max Weber). It is this body of literature that led Clark (2005: 12) to speak of a “veritable renaissance of international legitimacy talk.”³

It is only recently that we have seen contributions that move the focus more on to the empirical side of legitimacy and legitimation of transnational and international authorities. First, students of public opinion have conceptualized public support or trust for IOs as an indicator of their legitimacy, and explored the factors that lead citizens to accept or oppose them (Norris 2000; Hooghe and Marks 2005; Ecker-Ehrhardt and Weßels 2013; Maier et al. 2012). Second, some have argued explicitly that agreed normative criteria such as transparency, accountability, or participation are central to actors' legitimacy beliefs. To the extent that IOs fail to draw on normatively accepted sources of legitimacy, they risk losing societal acceptance and thus political effectiveness (Zürn 2004; Buchanan and Keohane 2006; Bodansky 2013). Third, a growing number of contributions have addressed how IOs are legitimated or delegitimated through communicative practices and strategies aimed at boosting or undermining the acceptance of these organizations. In contrast to the classic IR approaches, these bodies of work usually focus on the legitimacy of IOs in relation to a broader set of actors, including citizens (Bernstein 2011; Brassett and Tsingou 2011; Nullmeier et al. 2010; Zaum 2013).

In sum, the empirical study of global governance legitimacy so far has not attracted the systematic attention it requires. It is however crucial in the context where transnational and international authorities are entitled to make binding interpretations and decisions. In order to be perceived as legitimate, it must be also recognized that these competences are exercised so that they serve the common goods. Here the issue is legitimacy.

(p.67) 3.2 Sources of Legitimacy: The Impartial Pursuit of a Shared Social Purpose

Legitimacy is not just another term for a just order or for justice; it is not the social purpose itself. Legitimacy is not a primary or substantial goal, such as democracy, peace, or justice; rather it is an institutional virtue that remains dependent on some shared goals or social purposes that underlie it—the sources of legitimacy (see Forst 2015: ch. 8). The sources of legitimacy in a given authority relationship need not necessarily be worthy of recognition in the normative sense or from any external perspective. They just need to be recognized by the constituencies in an authority relationship—i.e. they refer to internal beliefs in legitimacy.

What then determines legitimacy beliefs in relation to international authorities? Simplifying slightly, there are three broad alternative answers to this question (see Tallberg and Zürn 2018, in preparation). According to the first perspective, legitimacy beliefs are the direct product of objective features of international authorities that audiences care about. Based on rational evaluation of these features, citizens and elites hold international authorities to be legitimate or not. Most existing literature on public opinion toward IOs is based on this assumption (e.g. Gabel 1998; Rohrschneider 2002; Chalmers and Dellmuth 2015). According to the second perspective, perceptions of legitimacy are unrelated to the features of international authorities. Instead, legitimacy beliefs vis-à-vis international authorities are a by-product of trust in national political institutions or other cues that are independent of the quality of decision-making procedures in international authorities and the quality of decisions by them. Recent work on the European Union (EU) and the United Nations (UN) adopts this understanding (Harteveld et al. 2013; Armingeon and Ceka 2014; Dellmuth and Tallberg 2015).

According to a third perspective, legitimacy beliefs are the outcome of a social process where individuals' prior beliefs interact with legitimization and delegitimation efforts. Legitimacy beliefs are then based on information that is derived from interpretative struggles about international authorities. These struggles consist of public strategies of authority defenders to legitimize, and of authority challengers to delegitimize, international authorities. The process leads to judgments which are based on framing, informational shortcuts, and cues. This perspective follows the logic of bounded rationality.

The third perspective is more plausible than the other two. On the one hand, it is certainly untenable to assume that social actors possess the knowledge, time, and capacity to rationally evaluate IO features, independent of how these features are communicated, contested, and justified in public discourse. A broad literature in political psychology and political theory postulates and **(p.68)** demonstrates that cuing, framing, and deliberations by elites and media reports influence attitudes (see e.g. Dellmuth and Tallberg 2018, in preparation). While

the objective features of IOs set certain parameters, contestation and justification of IOs affect how these features translate into legitimacy beliefs. On the other hand, it seems unreasonable to assume that legitimacy beliefs are completely unrelated to IOs, their procedures, and their policies. While individuals' trust vis-à-vis political institutions in general might matter, this cannot explain variation in legitimacy beliefs across IOs within the same audience. The process of legitimation and delegitimation is thus decisive for the development of legitimacy beliefs.

Such legitimation and delegitimation processes are however bound by the need to refer to a socially constructed system of norms, values, beliefs, and definitions (Suchman 1995). More specifically, legitimation usually involves the claim that the social purpose—which is the reason the authority was institutionalized in the first place—is being pursued with impartiality. The reference to an impartial pursuit of collective norms instead of specific interests represents the necessary ground for any promising legitimation strategy. The grammar of any legitimation effort thus consists of two components: impartiality and a social purpose.

Impartiality includes non-arbitrariness, but goes beyond that in including a sense of minimal fairness according to which like cases are treated alike. Certainly, existing authorities and the purposes and procedures they stand for reflect power relationships and do have distributive effects. Yet the exercise of authority and the application of rules needs to be impartial in order to be seen as legitimate. Faith in legitimacy dissipates immediately if the rulers are perceived as being exclusively self-serving. If the practice of an authority is seen as serving special interests in the concerned society, legitimacy fades away as well. We can use the authoritarian Mubarak regime as an example. The legitimation efforts were more or less successful as long as the leadership was seen as a specific Egyptian or Nasserist way to avoid the perils of backwardly Islamism and Western parochialism. However, once it became evident that the old Nasserist regime had degenerated into an apparatus serving the selfish privileges of a small ruling class, legitimacy beliefs dwindled rapidly. Legitimate authority—at least in modernity—requires, in the first place, perceived impartiality in the application of rules.

Against this background, David Beetham (1991) considers legal equality to be the necessary basis of any legitimate order. In this view, “rule by (transparent) law” is a fundamental condition for legitimate authority, and has made “belief in legality ... the most ubiquitous form of legitimacy belief” (Weber 1968: 19, author's translation). While I share the view that, in modernity, there is a common and necessary condition for all forms of legitimacy, I do not think it is grasped appropriately by the notion of legality—rather it is the **(p.69)** more abstract and general notion of impartiality in the application of rules. There may be, for instance, authorities that generate the belief in legitimacy by pointing to the incorporation of experts and the need to make decisions without being

bound too closely to lengthy legal procedures. The impartiality element of legitimacy beliefs can thus be produced by referring to different procedures on which the exercise is based—legality being one of those, the “objective” procedures of science another. In any case, the belief in an impartial exercise of authority is a decisive determinant for strong legitimacy beliefs (Tyler 1990). Avoiding the impression that authority is exercised partially or even arbitrarily is a necessary condition for legitimacy. While impartiality is necessary, it is not sufficient to generate legitimacy beliefs.

Impartiality must be fused with a *social purpose* consisting of common goals and procedures on how to achieve it. Public authorities must legitimate their activities by producing the belief that they serve a common good in an impartial way without violating dominant beliefs. This view is reflected in Beetham’s (1991: 11) elegant formulation: “a given power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs.” The empirical study of legitimacy therefore requires looking not primarily at the direct acceptance and support for a given institution, but at values broadly shared within a community, as well as at the extent to which an authority serves those values in practice. This allows an external perspective in assessing the practice of an authority and to consider a government as empirically illegitimate even if it enjoys high acceptance rates in the population.

As a source of legitimacy, authorities need to create beliefs that they—in practice—pursue the underlying social purpose in an impartial way. In other words: impartiality plus one or more common goods make up the sources of empirical legitimacy. Legitimation strategies aim at creating the impression that the exercise of authority is grounded in sources like participation and representation, accountability and transparency, fairness of outcomes, rule of law, individual rights, expert knowledge, tradition, strong leaders, wealth, and relative gains that increase the collective self-esteem. This list does not aim to be complete across all regions and periods in world history. In any case, legitimacy beliefs should not be conflated with democratic legitimacy. Empirically speaking, there are many other sources of legitimacy beliefs. Most of them can partially replace each other (cf. Möllers 2012), but are often used in parallel. One way to group sources of legitimacy is the distinction between the quality of decision making (procedure) and the quality of the decisions (performance). According to this distinction, both the achievement of common goods (e.g. social welfare) and the way the decision has been made (e.g. democratic participation) can serve as **(p.70)** sources of legitimacy.⁴ Both can be used for the construction of legitimation narratives.

3.3 Legitimation Narratives

Sources are the raw material of legitimation processes. Yet the legitimation of public authorities is rarely based on one source of legitimacy alone. In practice, different sources of legitimacy are crafted together in a narrative that binds the

authority back to the impartial pursuit of the social purpose. This bundling of different sources of legitimacy leads to *legitimation narratives or strategies*.⁵ The sources of legitimacy provide reasons that are embedded and combined in narratives of justification (see also Forst 2015: ch. 3). Legitimation narratives usually do not consist of single claims or references, but rather a combination of different sources. Narratives involve stories that mix reasons and deceptions in order to explain and justify a normative order (see Koschorke 2012).

At the same time, challengers of authority also craft and use such narratives in their attempt to delegitimize authorities. Legitimation and delegitimation narratives are real world accounts directed at the audiences of authorities. They are constructed by authority defenders or challengers in light of both the authority's purpose and the beliefs of the addressed community. They are patterns in the evaluative communication about authorities that vary in terms of the standards invoked for justification or challenges (see Gronau 2015). Narratives require at least "minimal coherence" in the sense that discursive justification, symbolic and photographic representation, and institutional reforms go along well (Gronau 2015: 479). Delegitimation narratives can be expected to be less demanding in terms of coherence, but outright contradictions limit the success as well.

While some "fiction" is part of all narratives, legitimation narratives must also appear somewhat consistent with the social purpose of the authority and its practice. At the same time, one can expect a lot of real-world variance **(p.71)** with respect to this criterion. Legitimation practices can therefore be ordered on the basis of the relationship between the practice of an authority, normatively justifiable sources (external view), and the beliefs of constituencies (internal view).

The ideal case is that constituencies hold beliefs according to which an authority's practice is legitimate for reasons that are compatible with normative theory.⁶ The external view of the normative theorist and the internal perspective on the sources of legitimacy thus converge with the observed practice and justification of the authority (External View ~ Internal View ~ Practice). In these cases, the normative concepts have developed (at least some) explanatory power: the power of ideas like autonomy, self-determination, and equality are then equally relevant in the social world as in the world of normative theories.

This is different from the situation in which the authority's practice and justifications meet legitimacy beliefs based on norms and values of a society that are not direct derivatives of modern normative theory, and thus do not converge with external views, but are still broadly shared within a society (External View ≠ Internal View ~ Practice). In this case, legitimacy is about the "justifiability of institutions in terms of reasons embedded in the real social identities" (MacDonald 2012: 57) of the constituency under question. Based on

this idea that legitimacy may be less than justice but still an institutional virtue, the views and motivations of the subordinates are taken as a starting point to identify the politically acceptable (Williams 2005).

Finally, the causal strength of the authority-legitimation link shows in that even the practices that are neither in line with the beliefs of the constituency nor morally defensible are often legitimated with narratives. In this case, authority holders and defenders construct a form of legitimation narratives that pretends to be based on moral or ethical sources of legitimacy, but in fact is not. Authority holders may, for this purpose, manipulate constituencies and strategically build on exclusion of outsiders via, for instance, enemy images to produce legitimation (Practice \neq Internal View \neq External View).

Whereas the third type of legitimation narrative seems to be most precarious, all narratives of legitimation and delegitimation can fail. The legitimation narrative chosen by authority holders and defenders can be challenged and contested by authority subordinates and observers. The outcome of contested legitimation is open. The effect of producing legitimacy is thus not built into the concept of legitimation narrative. One may distinguish the following legitimation narratives.

(p.72) 3.3.1 Participatory Narrative

This legitimation narrative is based on equal opportunity of participation for all those affected by regulation, or at least of all those to whom the regulations are addressed.⁷ Participation can take place directly or indirectly via representatives. Representation in turn can be organized along functional or territorial lines. While the forms of inclusive participation can be multi-faceted, they are a necessary component of democratic decision making (Dahl 1989). The deliberative theory of democracy points to another component of this narrative: public discourse and contestation. It is based on the conviction that the mere aggregation of predefined interests must be accompanied by an open process of deliberation about the right way for a collectivity (Habermas 1996).

The narrative usually also includes accountability and transparency.⁸ Complete accountability involves setting the standards for the authority against which it shall be held accountable, monitoring the outcomes, and sanctioning if the authority fails to achieve the goals (cf. Grant and Keohane 2005). Yet even complete accountability should not be confused with democracy. Accountability does not require the participation of all those who are affected by a decision—it only makes the decision makers electorally, legally, or in other ways *ex post* accountable to others. It is a means of control, not of participation. Yet participation, in turn, is ineffective if there is no accountability. Therefore, accountability most often is an ingredient of the participatory narrative.

Different actors can be involved in assuring accountability: internal actors assigned as independent monitoring agencies, all the shareholders (subjects) of

an organization, all those affected by the exercise of an authority (stakeholders), or even external actors (Hirschmann 2015). IOs are often directly accountable to the member states and indirectly accountable to non-state actors and societies. In any case, accountability presupposes some minimum level of transparency. Without any transparency, there can be no accountability. Electoral accountability plays an important role in this narrative. Western democracies—as well as the EU, to some extent, with its strong parliament and parliamentary election system—often refer to this narrative as self-legitimation. In these cases, there is some convergence of external and internal views, as well as practice.

3.3.2 Legal Narrative

The legal narrative of legitimation is based on the protection of basic rights and the rule of law. Since authorities usually reduce the autonomy of **(p.73)** individuals, it seems—especially from a liberal point of view—decisive that the exercise of authority does not violate individual rights in a disproportionate way, and that institutional provisions prevent such an outcome. Procedures that guarantee decisions that protect and promote individual rights, therefore, can produce beliefs in legitimacy (Hayek 1960). The rule of law is arguably the most important of these procedures.

The redress to the rule of law is, on the nominal level, one of the few universally accepted sources of legitimacy (Tamanaha 2004). There are, however, many different definitions of the rule of law, ranging from very thin ones (often indistinguishable from rule by law) to thick ones (containing a recognition of individual rights). Beyond the most minimalist version, the grammar of all arguments about the rule of law is roughly the following (see, among others, Carothers 2006). The rule of law first of all implies “authority of law and not of people.” Therefore, people in position of authority should exercise their power within a constraining framework of public norms that includes limitations on the abuse of public power for private gain. Second, the rule of law requires “legal certainty and predictability.” This is the requirement that norms and rules must be clearly defined in advance and accessible to all; it also includes adjudication procedures and the specification of the consequences of norm violations. Third, this concept of the rule of law includes “legal equality”; i.e. the law must be the same for all legal subjects and must not contain arbitrary distinctions or special personal prerogatives for those in a position of social or political power (Chesterman 2008; Hurd 2011).⁹

While the rule of law is not identical to the protection of individual rights, they often go hand in hand, emphasizing the role of courts. Yet, accountability plays a different role in the legal narrative. While accountability is the key mechanism to bind most individuals “in authority” to the protection of individual rights, the accountability of legal bodies is often minimized. In this narrative, courts and judges must be freed from mechanisms of accountability in order to decide autonomously and impartially. This reflects the general idea that it is the

independence and autonomy of the legal system that may have a legitimacy-generating effect. In the realm of global governance, defenders of international courts often use this narrative.

3.3.3 Fairness Narrative

This narrative of legitimation shifts the focus from procedures to outcomes, and aims at justifying the exercise of authority by fair outcomes. To the extent that an authority is seen as responsible for a fair distribution of resources and benefits, the likelihood of legitimacy of this authority increases. **(p.74)** Fairness can be based on needs, merits, or equal distribution (see Tyler et al. 1997), and the weighing of these different understandings of fairness is a major element of any normative theory of distributive justice (Rawls 1971).

The exact determination of what is considered a fair outcome is in this narrative seldom explicated and usually far below the sophistication of most theories in political philosophy. In any case, it refers to some correction of inequality as produced by market, nature, or by accident. The fairness-based legitimation narrative is therefore usually linked to authorities that have the capacity to significantly redistribute opportunities and wealth—i.e. organizations that channel a significant amount of resources available as exemplified by the welfare state. In the global governance system such institutions hardly exist. The fairness narrative therefore is most often associated with opposition and the aim of delegitimizing the international economic institutions.

3.3.4 The Technocratic Narrative

This legitimation narrative builds on non-prejudiced expertise and knowledge of the facts. Expertise is normally derived from the concept of science as an independent search for knowledge with no regard for particular interests, and based on a systematic methodology. Connected with this narrative is the hope for successful goal-oriented policies that especially promote the welfare of the community. Authorities derive their support from the quality of output (Scharpf 1991: 621–8) and its epistemic foundations. The idea is that the delegation of decisions and interpretations leads to policies that achieve shared goals most efficiently or effectively. In crisis situations, the technocratic narrative may even be transformed into a narrative of necessity. In this case, the decision-making institutions adopt a rhetoric of a state of exception which requires quick decisions which are without alternative.¹⁰

The technocratic legitimation is often accompanied with the idea of *ex post* “accountability”—a procedural component of this pattern of legitimation. The strategy is based on the sentiment of trust in science. The technocratic narrative is central in modernity, where it replaces more traditional accounts. As we will see, it is of special importance for the global governance system.

3.3.5 The Traditional Narrative

This narrative of legitimation builds on habituation, internalization, and references to the past. It often uses symbols to reproduce habituation and the dignity of the past, for it is still true that “the status quo has a certain aura of (p.75) legitimacy” (Snyder and Diesing 1977: 25). The open justification that accompanies such a narrative usually follows the conservative equation of authority and order, and is best expressed in an utterly modern formulation: never change a running system. It involves two arguments. First, something that has worked for a long time is good. Second, since the whole thing is complex, it is unlikely that single improvements can be produced without producing undesired side-effects that may undermine the system as a whole. This narrative is very much based on sentiments of loss. The ongoing relevance of religion is based on a similar reasoning. Like tradition, religion often points to internalized ethical beliefs short of moral justification.

The traditional narrative has often been used by conservative governments and established elites, as well as by religiously motivated movements against the undermining of the traditional order. As opposed to these “traditional forms” of traditional authority, tradition in the context of global governance does not refer to the traditional rights of a ruling family, but refers to the power of established norms to “*eingelebte Gewohnheit*” (routinized habits) (Weber 1968: 12). Social norms that have a long tradition enjoy a certain level of plausibility and respect just because they have been around for so long.

The power of tradition plays out in two ways. On the one hand, traditions are the best candidates for socialization and internalization (Checkel 2005). This essentially means that long-standing practices of authorities are moved out from the realm of reflexivity. On the other hand, if practices have prevailed for a long time, the appeal of the argument “that it is dangerous to change things” increases. In this sense, it seems fair to say that tradition points to a form of output legitimacy that builds on past successes, while expertise builds on the promise of future success.

Traditional and especially religious narratives may be particularly important in delegitimizing international authorities. While a close nexus between religion and politics is rejected in most parts of the Western world, it has recently been revived especially in other regions. In contrast to tradition, religion as a source of legitimacy works not only silently, but it can lead to a loud and dramatic appeal against change that has already taken place but needs to be reversed in the name of a holy figure. Some of the most important international authorities are targets of such revolutionary, religiously motivated movements.

3.3.6 Relative Gains Narrative

This legitimation narrative strengthens the feeling of self-esteem of a collectivity through their augmentation compared to others. It builds on gains relative to others. The production and use of an imagined community (Anderson 1983) often takes place in the form of sharp border-drawing between insiders **(p.76)** and outsiders (Walker 1992). This narrative usually points to past achievements, often personalizes the success, and emphasizes a down-to-earth mentality thus often pointing to a mass–elite divide. The guarantor of success is most often a single person or a certain party. This legitimation narrative externalizes any procedural considerations as an unnecessary brake on right and timely decisions. While in some cases expertise may play an important role, the narrative most often has an anti-intellectual tone and emphasizes collective self-esteem instead. The relative gains narrative is hard to defend in terms of normative theory.

The rise of economies in Asia fostered attempts to develop a narrative that combines the battle against poverty and the avoidance of overtly arbitrary rule with forms of authoritarianism and little societal openness. Keane (2014) calls this the “new despotism.” In the Chinese version of this narrative, it is founded on real achievements, and expertise is given a proper role. In the nationalist–populist version of this narrative—as in Hungary (Orbán), Russia (Putin), and Turkey (Erdogʻan)—it has a much more personalized and anti-intellectual touch. In addition to nation states, regional IOs may refer to the relative gains narrative as well. The EU, for instance, is often defended as means to prevent the decline of the European voice in world politics. To the extent that sharp border drawing mobilizes for the common good and distracts attention from a normatively dubious way of exercising authority, the use of it becomes partially manipulative.

3.3.7 Manipulative Narrative

All legitimation narratives contain some decoupling of practice from justification. All narratives idealize the practice of an authority. The notion of a manipulative narrative therefore sits uneasily as another source of authority. One may nevertheless separate a manipulative legitimation narrative aiming primarily at distracting from the purpose of the authority. To the extent that an authority serves aims that are not shared by the affected community and cannot build on impartial procedures, authority holders try systemically to manipulate constituencies by misrepresenting the facts and procedures, and creating false impressions. “Fake news” is an important element of a manipulative (de)legitimation narrative. Consumption, glamour, and leader cult also play important roles in such narratives. They usually come with the systematic manipulation of information of what authorities do, and about the circumstances in which they do it. Early critical theory (especially Marcuse 1991) pointed to such mechanisms of manipulation as part of the capitalist system. Similarly, the current talk about post-factual campaigns emphasizes manipulative aspects of

legitimation. Foucault's (1982) emphasis on given knowledge orders and episteme as sources of authority points in a similar direction.

(p.77) While manipulation may be successful in terms of creating legitimacy beliefs, it does not point to a social purpose, rather, it aims at hiding it. While a certain amount of hiding is common to all real-world narratives, it is especially relative gains-based and traditional narratives that are most often accompanied by manipulative efforts. It is therefore no accident that populist right-wing governments in Eastern Europe target the media before proceeding further in establishing an order that builds on a relative gains-based legitimation narrative. In extreme cases, manipulative narratives can be completely detached from the reality. If, for instance, a leader uses the threat of a coup d'état as a legitimation narrative, but there is in fact no real danger of such a coup, it is a fully manipulative narrative. Arguably, the North Korean government is closest of all political authorities to work almost exclusively with such a manipulative narrative.

To sum up, public authorities can encourage belief in their legitimacy if their practices create the appearance of supporting the common good in an impartial way. Any legitimation narrative is therefore pressed to create this impression. If it fails, it causes opposition and resistance and, in the long term, the decay of authority. Against this backdrop, it is now possible to point to two legitimation problems that are built into the global governance system. These problems are systemic, located at the level of interaction between authorities in the global governance system, and are identified from a constitutionalized perspective (see Chapter 2, section 4). These legitimation problems are derived from the difference between an observed perspective and principles of constitutionalism leading to expectations about empirical legitimation process and legitimacy beliefs.

3.4 Legitimation Problem I: Technocratic Bias

Global governance institutions cannot easily make use of all these legitimation narratives. This causes in effect a legitimation problem. To start with, manipulative narratives are hardly available for global governance institutions. To be sure, IOs—as any authority—aim at presenting the state of affairs in a way that is good for them, but the reflexive nature of inter- and transnational authority relationships runs against manipulative narratives. While there is a tendency to increase the glamour of some IOs by combining humanitarianism with global celebrities (Cooper 2008; Richey and Ponte 2013), this is a long way from being a manipulative narrative.

Second, global governance institutions are, relatively speaking, historically young. Moreover, the societies that participate in global governance institutions have often developed quite different—if not conflicting—ethical traditions. Most importantly, global authorities generally include groups that **(p.78)** submit to

different world religions (and some local religions as well). The *traditional legitimation narrative* therefore also seems to be not a good choice for public authorities in the context of global governance.

Third, a *relative gains narrative* with significant manipulative elements is also very unlikely to work for IOs. International and transnational authorities can hardly build on border drawing and communal bonds for the very reasons that they appeal mostly to a global community. The use of relative gains or manipulative legitimation narratives by global IOs is thus unlikely. However, it may be expected that regional institutions emphasize the importance of strengthening a region compared to others. There are indications that, in its current circumstances, the EU is moving somewhat toward such a narrative.

Fourth, the employment of the *fairness-based legitimation pattern* often presupposes programs and activities that involve either redistribution or capacity building on the side of the weaker actors. Inter- and transnational institutions are usually regulatory but not (re)distributive agents. Compared to nation states, which channel up to 50 percent of their gross domestic product (GDP), the material basis of global governance institutions is small. While there are some signs for an increasing role of international institutions in distributional matters—in monetary affairs and climate policy, as well as development programs—the major task of international and transnational institutions remains regulation.¹¹ For these reasons, fairness-based legitimation strategies are currently only of limited use for inter- and transnational authorities. At the same time, their regulations do have distributive effects, which can be used for fairness-based delegitimation strategies by critiques and challengers. The fairness-based narrative therefore is employed most often for the purpose of delegitimation of global governance arrangements.

Most importantly, inter- and transnational authorities can hardly utilize the *participatory narrative* either. Participation by all those affected by a given policy and broad public deliberations depend *de facto* on a setting with hierarchical sites of coordination between different sectoral authorities, since final decisions must be identifiable and assignable. In a national political system, hierarchical coordination takes place via formal procedures on the side of the authorities, for instance, via cabinet rules, supreme courts, or parliaments, and more informally through broad public debates within the constituency. The role of the head of government as the one who is in the position to decide if conflicts between ministries arise is a case in point. Moreover, in many constitutional states, supreme courts often decide on an appropriate valuation if **(p.79)** fundamental goals conflict; for instance, between freedom and security. In Westminster systems, the parliament plays this role. Moreover, broad public debates are characterized by an exchange of opinions in which different views and positions

about the society as a whole are put forward and participants from different sectors contribute (Neidhardt et al. 2004: 11).

Only if big political questions—for instance about the relative value of freedom and security, or whether a society should prioritize growth, or a clean environment—are at stake, larger segments of the population can get involved. Free elections, discursive will formation, party systems favoring those parties representing a broad range of interests, and majority decisions are the mechanisms that have made political participation of broad segments of the public possible in the territorial state. To be effective, these mechanisms depend on big issues. It is for this reason that the coherent and authentic use of the participatory legitimation narrative depends, to a significant extent, upon the presence of a body with meta-authority, i.e. the recognized capacity to resolve conflicts across spheres of authority in the hierarchical mode.¹² Since both parliaments and governments in democratic political systems consist of elected representatives, who in turn are organized in political parties, they are the most typical cases of the participatory legitimation narrative.

Beyond the nation state, the conditions for a successful participatory legitimation narrative are lacking to a large extent. Contrary to national political systems, the global governance system consists of a complex and fluid patchwork of overlapping jurisdictions. Each issue area has developed its own norms and rules, and the membership varies from issue area to issue area. The membership of the Organisation for Economic Co-operation and Development (OECD), for instance, is significantly different from that of the World Trade Organization (WTO). Debates and discourses take place almost exclusively within sectoral publics that do not address the side effects of certain measures for other issue areas. In such sectoral publics, the medium of interaction is often the Internet, specialized press, or personal exchanges or communications at conferences and meetings (Zürn and Neyer 2005: 201). Public debates about big political questions hardly take place, since meta-authorities are weak.

Against this background, the international system has informally produced some substitute institutions that sometimes seem to assume coordination in a hierarchical fashion. To begin with, immediately after the Second World War and after the end of the Cold War, the US government filled the role to **(p.80)** some extent (Ikenberry 2011a). In this early moment of unipolarity, the President of the United States identified the most urgent issues, set priorities, and even assigned the tackling of the issues to specific institutions. But this period of unipolarity turned out to be limited in time. The United States is certainly still a major actor when it comes to meta-authority, and if there is one “ruler” in the global governance system, it is the US government; but the functions associated with meta-authorities are at best badly fulfilled by the United States. A second candidate for meta-authority in the global governance system is the UN Security Council (UNSC). After the complete failure of the UN General Assembly (UNGA)

to take over this role, the UNSC in particular has aspired to it by deciding on all those issues in which the goal of peace and the protection of human rights seem to contradict each other. But it too often finds itself unable to act, given the veto powers assigned to the P5, and is thus unable to play this role.

In recent years, the G7/8/20 therefore seem to have defined themselves most visibly as central coordinators by giving other international institutions a sense of direction, and by taking up those pressing issues which are not sufficiently dealt with by existing international institutions and assigning the task to one of them (Zürn 2012b: 740). These attempts have, however, remained limited. Moreover, they generate resistance on the side of many other actors, because membership of these institutions is not only restricted, but also highly exclusive. The members of these institutions are self-nominated in the role as coordinators and lack authorization to act in this function.

All these three candidates playing rudimentarily the role of a coordinator between different sectors and levels—the US government, the UNSC, and the G 7/8/20—share two features. First, they are completely detached from many of the most affected societies. There are no formal and only limited informal channels available through which societal actors can make these institutions responsive to their demands. Moreover, these institutions were not created for the purpose of coordination in the first place. They are probably the most nascent elements of an emergent order. Global governance, therefore, is troubled by a strange lack of subjects: something happens, but no one has done it (Offe 2008). This prevents the use of a participatory legitimation narrative emphasizing majoritarian decision making and accountability.

On the contrary, inter- and transnational authorities often take the form of non-majoritarian institutions. Non-majoritarian institutions can be defined as governance entities “that (a) possess and exercise some grant of specialized public authority, separate from other institutions and (b) are neither directly elected by the people, nor directly managed by elected officials” (Stone Sweet and Thatcher 2002: 2). In theory, their major task is to limit and control the public powers and to implement the norms set by the **(p.81)** legislative.¹³ In this conception of democratic rule—in line with the notion of separation of powers in a constitutionalized system of rule—parliaments are the norm setters and, together with the executive, they are considered the most important majoritarian institutions that stand for the foundational component of a political system. Non-majoritarian institutions have, in this design, mainly a limitational function.

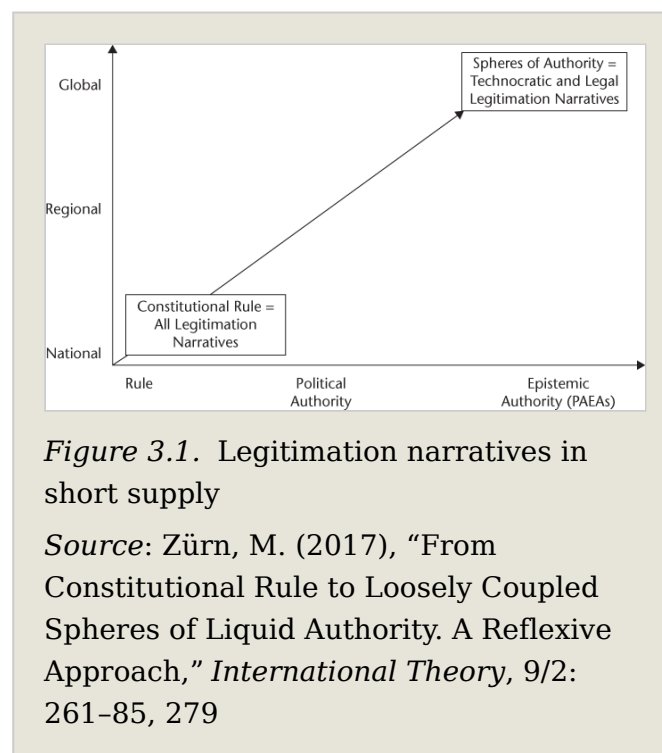
Yet in the context of global governance, these non-majoritarian institutions go beyond the limitational function. They set norms and structure the interpretation of reality; they exercise political and epistemic authority. Political authority often emphasizes accountability to member states. Yet, the participatory legitimation

narrative can hardly be tapped into. Inter- and transnational institutions, central banks, and constitutional courts, as well as regulatory agencies, display primarily a technocratic and sometimes legal legitimation narrative when justifying their authority. In general, their legitimation narrative consists primarily of notions of effectiveness, wealth, superior knowledge, and sometimes the protection of human rights.

Politically assigned epistemic authorities (PAEAs) emphasize expertise even more often than international political authorities. National and international courts—the institutional expressions of legal epistemic authority—build, in addition, on the liberal pattern of legitimation; i.e. the protection of individual rights and the rule of law. In general, the legitimation of spheres of authority depends on results and their ability to adapt to new circumstances. In this respect, they point to notions of experimentalist governance (Sabel and Zeitlin 2012).

For all these reasons, the association between the global governance system as one with only loosely coupled spheres of authority and technocratic and legal legitimation narratives looks like a logical and smooth development at first sight. In this view, it is only a fully constitutionalized political system of rule that can employ participatory and fairness narratives. By contrast, limited public authorities seem to be less demanding in terms of legitimation than the constitutionalized state (see e.g. Majone 1994; Moravcsik 2006; but see Follesdal and Hix 2006).

This development can be broadly summarized as shown in Figure 3.1.



A closer look reveals that the association between the global governance system and technocratic and legal narratives is not smooth. Rather, it points to a contradiction within currently dominant belief systems. On the one hand, democracy with the participatory legitimation narrative at its core is, according to available survey data, accepted worldwide as a desirable political order. In all countries covered by the World Values Survey, the majority of respondents are in favor of democracy. With only two exceptions (Colombia and **(p.82)** Russia), this view is taken by more than 80 percent of the population. On the other hand,

political institutions that do not draw on genuinely democratic sources of legitimation—inter- and transnational institutions, the EU, but also courts and central banks—are gaining in importance throughout the world. As a result of this development, the effective power of political institutions that justify themselves on participatory and majoritarian grounds is reduced.

This tension adds up to a paradox when we look at survey data showing for a long time a widespread support for this institutional development, especially in Western societies. While still believing that democracy is the superior normative principle, people in parliamentary democracies seemed to like epistemic authorities much more than political institutions that are inherently connected to majoritarian rule in a constitutionalized state; i.e. to parties and parliaments. In recent decades, comparative research on democracy has found a decline in political participation, evidenced in the average OECD country by a steady fall in voter turnout and a marked decrease in party membership since the 1960s (Hay 2007: 21). This is especially critical if developments are accompanied by low confidence in party politicians, the government, and the parliament. In fact, among the multitude of public institutions, political parties in the United States and the EU consistently scored worst on confidence—worse even than big business and the media. Parliaments, too, scored badly, generally ranking fourth-to-last of twelve public institutions.

(p.83) Compared to parties and parliaments, constitutional courts and central banks enjoyed a very good reputation in most countries. In many Western countries, especially in Germany, the constitutional court still outscores consistently all other national political institutions. More generally, in all twenty-two countries covered by the 2008 European Social Survey, people had greater confidence in the legal system than in the parliament and parties (Norwegian Social Science Data Services 2011). The same holds for Eurobarometer data, according to which, however, the legal system was in turn considerably outscored by the police and the military.¹⁴

International institutions were also grounded in a remarkable degree of recognition. In the consolidated democracies of the West, the UN enjoyed greater political trust than national parties and parliaments (Hay 2007: 34). The succeeding waves of the World Values Survey Reports also showed that a majority of people in the world has confidence in the UN (Furia 2005). Throughout the world, 49.2 percent assessed the UN positively (*a great deal or quite a lot* of confidence); this figure falls only slightly to 48.1 percent, when respondents from EU member states are discarded. The UN had markedly lower scores only in the Middle East (Iran 38.9 percent; Iraq 13.4 percent). The figures for China (66.2 percent) and India (64 percent) were even higher than those for Europe.

This broad support of authorities that do not legitimize themselves on the basis of a participatory narrative may be labeled as “the democratic paradox”: while participatory democracy requires a constitutionalized political order—in which especially the coordination of governance and the delegation of authorities is controlled by majoritarian institutions—the people who, in principle, are in favor of democracy for a long time trusted especially non-majoritarian institutions that are often beyond the reach of majoritarian institutions.

To the extent that this paradox becomes open, it creates precarious dynamics in the processes of political legitimation. As a result, the legitimation of reflexive authorities becomes reflexive as well; conflicts over which justification is appropriate for which form of political authority may arise more and more. In most of the twentieth century, the question about legitimacy was one in which the standards of democratic decision making in national political systems were relatively consented and uncontested. The legitimacy question was whether and to what extent these standards were fulfilled. Today, the very standards are contested. In such reflexive legitimation conflicts, it is not only the question “Was the decision legitimate?” that is questioned but **(p.84)** also the standards themselves: not only the “what” (What counts as effective basis for legitimation?) gets disputed, but also the “who” (Who decides about this?) and the “how” (How and under which conditions can we answer these questions and institutionalize the answers?) are starting to come under fire as well (Fraser 2009; Keane 2009). It is these questions which feed the rise of a new cleavage that seems to partially complement and partially replace the old cleavage between left and right (see de Wilde et al. 2018, in preparation). Open borders, authorities beyond the nation state and minority rights are challenged by populist groups that are often based on a non-pluralist understanding of the majority (Müller 2016).

Whatever the outcomes of these reflexive legitimation conflicts will be at the end of the day, transnational and international authorities have to face the problem that their legitimation narratives almost necessarily have a technocratic bias. Since participatory, fairness-based, traditional, relative gains, and manipulative legitimation narratives can hardly be used by global governance institutions, they are stuck with technocratic and to some extent legal legitimation narratives. These narratives are however—in line with the notion about reflexive legitimation conflicts—increasingly being challenged: transnational protest movements see these institutions as servants of a global (neo)liberal elite that hides its power with legal expertise and a technocratic knowledge order; right-wing populist parties within national political systems challenge lawyers and technocrats in IOs for being distanced from the people and their feelings (defined as the silent majority); political elites in rising powers criticize global governance institutions as instruments of Western domination. In other words, it

is the bias toward these two legitimation narratives that is increasingly politicized and contested.

3.5 Legitimation Problem II: Biased Exercise of Authority

There is another legitimation problem inscribed into the current structures of the global governance system. A successful legitimation narrative must nurture the belief that the authority serves the social purpose and provides for the common good in an impartial way. While the loose coupling of spheres of authority circumscribes the utilizable legitimation narratives, the weak separation of powers undermines non-arbitrariness and impartiality of international institutions. It leads to a biased exercise of authority.

Although international institutions begin by giving all sovereign states a seat at the table, they simultaneously perpetuate inequalities (see Viola et al. 2015). In many international institutions, formal political equality is maintained in the rule-setting stage in that any decision about the content of rules requires the consent of all states. This formal political equality helps smaller states to **(p.85)** increase their bargaining power, and thus can be seen as an equalizing force. Yet Randall Stone (2011) has documented how the informal influence of resource inequality can offset the apparent move toward formal political equality already at the negotiation state. Sometimes this happens by moving decisions to informal forums, such as the G-groups, where powerful states hold sway (Vabulas and Snidal 2013), but often it happens through informal processes within formal organizations. The green room negotiations of the WTO, for example, privilege a small set of powerful actors in the process of rule setting.

As long as international institutions are intergovernmental bodies based on consent, their effect on sovereign equality is ambivalent, but often positive overall. Although both procedural and substantive rules are likely to reflect power inequalities in these institutions, the legal equality expressed in the consent principle acts as an equalizing force. Insofar as international institutions exercise authority however, the consent principle is undermined and a centralization of power takes place. If this dynamic is not balanced by a strong separation of power, there are three reasons why this leads to the institutionalization of inequality.

First, the more an IO exercises authority over states and societies, the more powerful states want to see substantial policies in line with their preferences. Powerful states accept the authority of international institutions only if they can be sure that the institutions will enable them to maintain their privileged status. For this reason, they often demand privileges, such as exceptional treatment or special rights. Thus, international institutions capable of exercising authority over members, such as the UNSC, are likely to privilege powerful states regarding both the substantial content and the procedures.

The content of international rules therefore sometimes reflects the power distributions to a level that undermines basic principles of legal equality. For instance, only days after the International Criminal Court (ICC) began functioning, the United States was granted temporary special rights in the form of Resolutions 1422 and 1487 (Deitelhoff 2009), according to which American soldiers who committed crimes when deployed on UN missions could not be indicted. Corresponding exceptions were also offered in the design of the Ottawa Landmine Convention and the Kyoto Protocol. In the latter, the United States negotiated favorable conditions so that questions concerning equal treatment could justifiably be raised. If the United States, which is amongst the top producers of per capita CO₂ emissions and is also among the richest countries in the world, is allocated significantly lower emission reduction obligations than many other countries, this would appear to be an expression of differential rights sanctioned by law. Within a constitutionalized separation of power, supreme courts are likely to quash such a law as being unconstitutional. In short, as international institutions gain authority, powerful states are especially careful that they do not contradict their interests.

(p.86) At the same time, the most powerful states ask for procedures that ensure their privileged role by weighted voting rights and vetoes. These institutional privileges may become so deeply entrenched over time that political inequality is very hard to change even if the underlying resource distribution has changed. On the UNSC, for example, France retains its veto position even though it has been surpassed as a great power by other states. While the UNSC would never be constituted the same way today, the difficulty of agreeing on a new membership, the interests of existing permanent members in not opening up the membership question, and the possibility that trying to change things might disrupt the existing arrangement have been sufficient reasons to preserve the prevailing arrangement. Given that any attempt to abolish the special position of the veto powers can be thwarted by this very same veto, we have institutionalized inequality. The World Bank and the International Monetary Fund (IMF) provide additional examples of the institutionalization of political inequality. In a system with an established separation of power, there would be pre-defined mechanisms to change such a degree of asymmetric influence on decision making.

Second, the more an IO exercises authority over states and societies, the more it depends on the resources of its most powerful members. While this is a general mechanism, it is especially relevant when it comes to the authority to enforce decisions. This can again be best illustrated with reference to the UNSC. When a UNSC resolution authorizes an intervention in order to maintain international peace, the material resources—financial and military—allocated to the problem is enormous. The IOs do not have these resources at their disposal, but depend in this respect on the most powerful member states.

This dependence of international authorities on national resources leads, in the absence of a separation of power, to the lack of an independent administration. As a result, the implementation of decisions and interpretations by inter- and transnational authorities will tend to be selective and biased in at least two ways: it depends on the willingness of powerful states to act, and it will exhibit a bias against enforcing laws on powerful states and their allies. The UN, for example, continues to depend on the willingness of individual states—such as the United States and its allies—to implement peace enforcement operations decided on by the UNSC. Because powerful states are only interested in intervening in conflicts in exceptional cases, the UN itself can only selectively enforce its laws (Zangl and Zürn 2003). The UN was not in a position to militarily intervene, for example, in the civil war situations in Myanmar, Sudan, Angola, or Liberia, as no powerful state was willing to send its armed forces on a military mission authorized by the UN.¹⁵ Thus, the most powerful states, and above all the United States, effectively decide when **(p.87)** fundamental norm violations are sanctioned and when they are not, and the UN's peace enforcement remains necessarily selective. It also means that an intervention of the international community in countries like China or the United States is excluded by definition. The rules therefore cannot be applied to significant parts of the world by the international authority in a consistent way. Without sufficient independent capacity to implement and enforce the decisions and interpretations, the impartial exercise of authority is impossible. Again, in the absence of an effective separation of power, the rise of inter- and transnational authority leads to the institutionalization of inequality.

Third, the more an IO exercises authority directly over society, the more the “one-state, one-vote” principle loses normative dignity. This is reflected in the changing ways in which institutions legitimate their authority. Given the double constituency of global governance, there is an increasing need to create a direct link between the international institutions that exercise authority and the societal targets of regulations. In view of the dramatic differences in the size of states—ranging from a few thousand inhabitants in countries such as Liechtenstein to over 1.3 billion in the case of China—the sovereign equality of states does not provide a normatively compelling principle for the representation of societal interests (Luban 2004), especially when international institutions exercise authority directly. The exercise of direct authority strengthens the claim that states with large populations should have more influence than those with smaller populations. In this sense, the delegation of authority to institutions might amplify the political inequality between states for normative reasons. The institutionalization of inequality between states of different sizes however leads only then to normatively acceptable results, if it is accompanied by an effective separation of power.

In sum, the more the consent principle is replaced with international authority, the more political inequality between states becomes institutionalized. Since the separation of powers in global governance is weak at best, serious legitimation problems might arise. The implementation of norms may become selective, the rules themselves sometimes violate legal equality between states, and the executive practice undermines the appearance of impartiality. As far as the idea that “like cases should be treated alike” is the most significant source of legitimacy, the undermining of impartiality poses the most serious legitimation problem.

As Andrew Hurrell (2007: 281) writes: “The problem of unbalanced power is not that unchecked power will lead inevitably to tanks rolling across borders. It is rather that radically unbalanced power will ... undermine the procedural rules on which stable and sustained cooperation must inevitably depend.” The rise of international authority undermines both sides of the sovereign equality formula: states do not always have final authority, as they are embedded in a global governance system in which they are not equal.

(p.88) Overall, this chapter’s claim is that the authority–legitimation link takes effect in the context of global governance to the extent that international institutions exercise authority. It is the rise of authority that makes legitimation necessary. And it is, in turn, the impartial conduct in the provision of common goods that is likely to make the exercise of authority legitimate. It takes authentic legitimation narratives to nurture this belief in legitimacy. However, a global governance system with only loosely coupled spheres of authority limits the legitimation potential that can be tapped by inter- and transnational authorities. Inter- and transnational authorities are more or less left with legitimation narratives that create a technocratic bias. Even more problematically, the necessary component of all successful legitimation—impartiality—is violated due to institutionalized inequality in a context of weak separation of powers. Therefore, the global governance system has both structural and severe legitimation problems.

Notes:

⁽¹⁾ See the contributions by Alter et al. (2016); Peters and Karlsson Schaffer (2013); and Marmor (2011), who argue similarly in defending the separation of authority and legitimacy. See also Daase and Deitelhoff (2015), who argue that the notion of legitimate authority prevents the understanding of resistance to rule.

⁽²⁾ In IR in general, legitimacy has been used as a term from time to time (Carr 1964; Claude 1966; Franck 1990; Risse et al. 1999), but not anchored in the study of international authority.

⁽³⁾ A first strand of normative legitimacy research focuses on whether and how the input side of global governance can be democratized. The legitimacy of IOs is, according to this view, based on their ability to meet democratic standards of participation, transparency, and accountability (see Held 1995; Zürn 2000; Buchanan and Keohane 2006; Held and Koenig-Archibugi 2005; Scholte 2011; Steffek 2003; Keohane et al. 2009). Another strand of research has instead explored normative values associated with the output side of global governance, assessing the extent to which IOs produce outcomes that contribute to efficiency, justice, and fairness (see e.g. Pogge 2002b, as well as Buchanan and Keohane 2006).

⁽⁴⁾ This, of course, is similar to the distinction between input and output legitimacy introduced by Fritz Scharpf (1970, see also 1999). In order to account for the processes that take place in the black box, Vivien Schmidt has added throughput legitimacy (Schmidt 2013). By freeing the distinction from its system-theoretical language, the distinction between the quality of decisions and the quality of decision-making however avoids sophisticated discussions about what counts as input and what as throughput. See also Tallberg and Zürn (2018, in preparation). See also Halberstam (2009), who considers the three sources of “voice,” “rights,” and “expertise” as an encompassing typology.

⁽⁵⁾ Strictly speaking, narratives refer to the discursive level only. Sometimes, institutional reforms or certain policy measures are used as part of an attempt to justify authorities. In this case, the term “legitimation strategy” seems to be more appropriate. Yet I prefer the term narrative in general, since it leaves open the question whether a certain justification is authentic or merely for strategic reasons.

⁽⁶⁾ In order to fill the notion of “defensible in terms of normative theory” with meaning, it must be associated with specific normative reasoning. In the remainder, I take arguments which are developed broadly in the context of liberal normative theory as normatively defensible (see Rawls 1971 and Habermas 1996).

⁽⁷⁾ This difference between all those affected and all those addressed points to one of the major divisions within normative democratic theory (see Karlsson Schaffer 2012).

⁽⁸⁾ Accountability and transparency are not considered to be a distinct narrative, since they are in one way or another way part and parcel of most narratives.

⁽⁹⁾ For a detailed discussion, see Reinold and Zürn (2014).

⁽¹⁰⁾ See Kreuder-Sonnen (2016) for an intriguing analysis of emergency policies by IOs.

(¹¹) But see the excellent studies in Genschel and Jachtenfuchs (2014), which demonstrate how the EU has entered those holy realms of the nation state. See Kuhn (2015) for a good treatment of the socio-cultural conditions for transnational solidarity in Europe.

(¹²) Among others, Dryzek (2006) and Macdonald (2012) argue that normatively acceptable participation is possible in non-hierarchical settings. Indeed, deliberation and participation can work very well in sectoral settings. In order to stimulate broad participation beyond the group of people who are not immediately affected, it is however necessary to engage in political struggles about the relative value of conflicting goals.

(¹³) See the contributions in Preuß (1994), especially those by Stephen Holmes and Jon Elster.

(¹⁴) The figures on confidence in various professions show a similar picture. In Britain, e.g., doctors, teachers, and scientists head the overall field, judges have a clear lead within professions that play a role in the political system in a broader sense—with 60 percent more positive than negative assessments; followed by policemen (26 percent more). Tailing the overall field are ministers, politicians, and journalists with 51 percent more negative than positive scores (Hay 2007: 35).

(¹⁵) See Binder (2009, 2017) for an account of factors driving the selectivity of interventions.

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