

Legitimacy, global governance and human rights institutions

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Condenado a 25 años

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Cosmopolitan functionalism 1

- Buchanan & Keohane 2006, Caney 2009, Kumm 2004.
- Why global governance institutions (GGIs)?
 - a) Provide joint benefits
 - b) Prevent abuses of power
 - c) Promote global justice and peace

Cosmopolitan functionalism 2

- What's the legitimacy problem, then?
 - Promoting (a) joint benefits, (b) checks on power, (c) global justice = a *prima facie* claim to legitimacy
 - In order for GGIs to provide such goods efficiently, citizens must perceive them to be legitimate
- The puzzle:
 - To offer citizens reasons to accept the authority of GGIs – short of justice and self-interest...
 - ...and even though the benefits such institutions provide are mainly enjoyed by states

Cosmopolitan functionalism 3

- The solution: Complex, hybrid standards of legitimacy
 - Reject (as notions of legitimacy)
 - State Consent
 - Global Democracy
 - Global Justice
 - E.g. Buchanan & Keohane:
 - *Procedural*: Ongoing consent of democratic states
 - *Substantive*: Not to violate basic rights and actually meet institutional goals
 - *Epistemic*: Facilitate accountability to external NGOs

Why international human rights institutions are different 1

- Moravcsik (2000): Unlike GGIs, IHRIs...
 - ...do not concern policy externalities, but hold governments accountable for internal affairs
 - ...are not enforced by inter-state action, but by domestic activism
 - ...are chiefly means for governments to 'lock-in' particular preferred policies in the face of political uncertainty

Why international human rights institutions are different 2

- Simmons (2009):
 - HR treaties – an anomaly for rationalist-functionalist IR theory:
 - No joint benefits
 - No reciprocal enforcement
 - No significant reputational costs
 - Domestic effects: Empowering individuals and groups
 - i. Effect elite-initiated agendas
 - ii. Support litigation
 - iii. Spark mobilization

If *this* is what IHRIs are,
what legitimacy problems
then follow?

Two legitimacy puzzles

	<i>Benefits or Opportunities</i>	<i>Costs or Constraints</i>
<i>Global governance institutions</i>	States	Individuals (citizens)
<i>International human rights institutions</i>	Individuals and groups	States (governments)

Inverting the puzzle

- GGIs...
 - ...may hold a *prima facie* claim to legitimacy for providing states with certain benefits (a, b, c)
 - But why should individuals accept to bear the cost?
 - Solution: Complex standards
- By contrast, IHRIs...
 - ...may hold a *prima facie* claim to legitimacy in providing *individuals* with certain benefits (i, ii, iii).
 - But why should *states* accept to bear the costs?
 - Solution: State consent

Rehabilitating state consent

- Cosmopolitan functionalists:
 - State consent: outdated, immoral, neither sufficient nor necessary for legitimacy
 - Oppressive states have no legitimacy to pass down the line to GGIs; they are not *moral agents* worthy of respect
- In the HR area, however...
 - Rejecting state consent on these grounds seems to absolve oppressive governments of their HR obligations
 - State consent is indispensable for both transnational and domestic activists who hold governments to account
 - ...and thus a necessary – if insufficient – element of legitimacy

Conclusion

- Limited generalizability?
 - IHRIs uniquely empower individuals to assert their rights vis-à-vis the governments ruling over them
 - OTOH, institutions in other issue-areas may also mismatch the GGI ideal-type – perhaps increasingly so (cf. Zürn 2004)
 - *If* state consent is a necessary element of legitimacy in the HR area – useful in other areas too?

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