

# The politics of legitimacy in international institutions

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## *Abstract*

In this paper, I critically address the standard of legitimacy in global governance institutions that Robert Keohane and Allen Buchanan recently have suggested, according to which international institutions are legitimate if they enjoy the ongoing consent of democratic states, meet certain substantive criteria such as not violating basic human rights, and provide epistemic possibilities for outside agents to engage in monitoring what they do and revise their goals and procedures.

First, I outline the conception of international institutions underlying their theory of legitimacy. Drawing on rationalist-functionalist theories, they suggest that international institutions provide states with benefits they cannot otherwise obtain. Such a statist, utilitarian conception of institutions, however, turns out to be problematic when incorporated into a theory of legitimacy that also aims to pay homage to cosmopolitan individualism.

Second, criticising their complex standard, I argue that they fail to convincingly establish the consent of democratic states as a necessary, if insufficient, condition of legitimacy. Turning to their substantive and epistemic criteria of legitimacy, I suggest that they continuously misconstrue problems of political disagreement as epistemic problems, to which they then can propose their epistemic elements of legitimacy as solutions.

Third, I suggest that the elements of legitimacy suggested by Buchanan & Keohane could better be understood as a pluralist list of values in terms of which institutions could be justified. Such a conception of legitimacy would draw our attention to *how* political authority is justified and *to whom*, rather than in terms of *what*.

## THE TURN TO LEGITIMACY

Over the past decade or two, scholars from various fields have debated the legitimacy of international institutions. Some approach the matter from democratic theory, discussing whether existing or new models of democracy could improve the legitimacy of global governance structures.<sup>1</sup> Others come from international theory, taking on previously suppressed normative issues, and seek to bring standards of accountability, transparency and so on to bear on international institutions.<sup>2</sup> Yet others spring out of the so-called cosmopolitan turn in political philosophy, which recently has started addressing issues of what sort of global political order, if any, a cosmopolitan morality would require.<sup>3</sup> And, finally, students of the European Union and international law ask related questions of legitimacy in their respective fields of knowledge.<sup>4</sup> Most, if not all, seem to agree that there is an expanding gap between, on the one hand, the number, the scope and the power of international institutions, and, on the other, the justification of their right to govern, which cannot be based merely states consenting and delegating power to them. And while some doubt that this gap could be overcome, most seem to think of it as one of the most urgent global matters. Hence, this literature suggests, we need to develop standards of legitimacy for international institutions and global governance.<sup>5</sup>

In this paper, I shall critically analyse one prominent contribution to this burgeoning literature: The complex standard of international institutional legitimacy that Allen Buchanan & Robert Keohane suggest in a recent article.<sup>6</sup> Buchanan & Keohane claim that global governance institutions provide benefits that could otherwise not be obtained, but in order to efficiently provide such benefits, they need people to perceive them as legitimate. Rejecting states' consent and global democracy as standards of legitimacy, Buchanan & Keohane present a standard by which international institutions are legitimate – and thus deserve that their subjects treat the rules they issue as worthy of compliance, regardless of the content of those rules – to the extent that they enjoy the ongoing consent of democratic states, meet certain substantive criteria such as not violating basic human rights, and provide epistemic possibilities for outside agents to engage in monitoring what they do and revise their goals and procedures. This complex standard, they argue, “provides a reasonable basis for agreement in legitimacy assessments of global governance institutions.”<sup>7</sup>

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<sup>1</sup> Bohman, *Democracy across borders: From dêmos to dêmoi*; Dryzek, *Deliberative global politics: Discourse and democracy in a divided world*; Habermas, *Der gespaltene Westen: Kleine politische Schriften*; Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*.

<sup>2</sup> Risse, “Global governance and communicative action”; Keohane, Macedo, and Moravcsik, “Democracy-Enhancing Multilateralism”; Grant and Keohane, “Accountability and abuses of power in world politics”; Keohane and Nye, “Redefining accountability for global governance”; Zürn, “Global governance and legitimacy problems.”

<sup>3</sup> Caney, “The responsibilities and legitimacy of economic international institutions”; Caney, *Justice beyond borders: A global political theory*; Pogge, *World poverty and human rights: Cosmopolitan responsibilities and reforms*; Cabrera, *Political theory of global justice: A cosmopolitan case for the world state*; Kuper, *Democracy beyond borders: Justice and representation in global institutions*.

<sup>4</sup> Bodansky, “The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?”; Follesdal and Hix, “Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik.”

<sup>5</sup> Bexell, Tallberg, and Uhlin, “Democracy in Global Governance: The Promises and Pitfalls of Transnational Actors.”

<sup>6</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions.” While they prefer the term ‘global governance institutions’, I shall use the term ‘international institutions’, which I take to be synonymous for present purposes.

<sup>7</sup> *Ibid.*, 436.

I choose to focus on Buchanan & Keohane's proposal in part because they might be representative of broader trends in recent normative theorising about international institutions. For instance, many cosmopolitan writers seem to endorse a similar functionalist view of international institutions, according to which international institutions are there, or ought to be there, in order to fulfil certain objectives of common welfare.<sup>8</sup> Moreover, Buchanan & Keohane represent fairly widespread notions about international legitimacy, too, for instance that it cannot be reduced to state consent, global democracy or global justice, and that any standard of legitimacy needs to take both procedural (input) and substantive (output) elements into account, and combine these into a complex standard.<sup>9</sup> Hence, the critique that I offer will focus on these two aspects: the functionalist conception of international institutions and the complex standard of legitimacy, and how the one interacts with the other in Buchanan & Keohane's theory. To the extent that I succeed, we should be able to draw a few more general lessons from this close encounter with Buchanan & Keohane.

The paper is arranged in two sections: First, I seek to outline the functionalist notions of international institutions underlying Buchanan & Keohane's theory of legitimacy. Second, I analyse their standard in detail, arguing that they fail to convincingly establish the consent of democratic states as a necessary, but insufficient, condition of legitimacy. Turning to their substantive and epistemic criteria of legitimacy, I suggest that they continuously misconstrue problems of political disagreement as epistemic problems, to which they then can propose their epistemic criteria as solutions. My critique, however, is not as unforgiving as it may seem, for in the conclusion, I shall suggest that the elements of legitimacy suggested by Buchanan & Keohane could more fruitfully be regarded as a pluralist list of values desirable for any institution to live up to, though they are often incompatible and incommensurable, a fact which should draw our attention to the exercise of political judgment. It should also lead us to ask *who* the subjects of legitimate authority are, an issue unfortunately neglected by Buchanan & Keohane.

#### WHAT INTERNATIONAL INSTITUTIONS ARE

Before one can start ask any normative questions about international institutions, such as whether standards of legitimacy, democracy and accountability apply to them, and, if so, in what way, one must first settle the more fundamental ontological question: What are they? Here, I do not intend to settle that question by offering and defending a conception of my own, but I aim to bring out what Buchanan & Keohane think institutions are, in order to highlight the limits and problems with such a view of institutions, and how those limits influence, in turn, their discussions of legitimacy and power in such institutions.<sup>10</sup>

Why is that a worthwhile undertaking? Much of the literature produced as an offspring of the institutional turn of the cosmopolitan turn in political philosophy, as well as debates about transnational democracy (cosmopolitan, deliberative or something else) often seem to skip this ontological question, or at best address it indirectly. Only too often, such studies postulate that certain interna-

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<sup>8</sup> cf. Held, "Law of peoples, law of states"; Kuper, *Democracy beyond borders: Justice and representation in global institutions*.

<sup>9</sup> For a similar proposal, see Caney, "The responsibilities and legitimacy of economic international institutions." Like Buchanan & Keohane, Caney presents a "hybrid" standard of legitimacy for international institutions, which combines both substantive and procedural/epistemic elements. Likewise, he rejects state consent, in its various guises, and global democracy as sources of international institutional legitimacy.

<sup>10</sup> For an overview of different conceptions of institutions in IR literature, see Duffield, "What Are International Institutions?."

tional institutions exercise increasingly autonomous, unaccountable power, and then go on to discuss what they see as the more important matter of reining in that power in various ways. This is somewhat surprising, given that international relations scholars have spent a great deal of the past decades debating precisely what international institutions are.<sup>11</sup> Are they merely epiphenomenal to power, as realists would have it, or do they exert an independent influence on international politics? And if they do influence politics, in what way? By helping states solve coordination and collective action problems, or rather by constituting identities, preferences and the roles of the play? Any normative theory about international institutions must, naturally, take a stand on such issues, if not else just in order to define the subject matter, and hence, normative theorists might fruitfully learn from these debates within international theory.

On the other hand, mainstream debates in IR on institutions do not necessarily exhaust the matter either. IR debates about institutions still seem to suffer from an idealist bias: Whether rationalists or constructivists, those who agree that institutions do exert independent influence mostly seem to regard that influence, implicitly or explicitly, as benign. Institutions provide governments and other actors with benefits they could not otherwise obtain, or they socialise states to civilising, liberal norms and identities. Interestingly, as other sub-disciplines of political science have resurrected institutions in the past decades, they have asserted, too, that institutions may exert an independent influence on politics, but have assessed that influence more sceptically.<sup>12</sup> This literature teaches us that institutions often take on a life of their own, and create constraints and opportunities neither intended nor anticipated by their founding fathers, an insight that only too rarely inform normative studies of international institutions.<sup>13</sup>

When normative theorists approach the subject matter of the legitimacy of international institutions, they usually have international organisations in mind: formalised institutional bodies with an acronym and an office, such as the IMF, the WTO, the ICC, the UN and its various bodies, etc. Likewise, when normative theorists suggest that new institutions ought to be created, they usually have organisations or agencies of this formalised, concrete kind in mind.<sup>14</sup> The main reason to focus on such institutions, of course, is that they exercise political power, supposedly. Buchanan & Keohane argue (and, likewise, Caney) that international institutions exercise political authority, yet are significantly different from states: Akin to states, they issue rules and claim the authority to sanction those who fail to comply with those rules. By the rules they set, institutions may constrain the choices facing societies and impact on persons' fundamental interests, which makes them distinctly *political* institutions.<sup>15</sup> By contrast with states, however, international institutions have a restricted remit, they do not claim a Weberian monopoly of violence and they rely, importantly, on the consent of states.<sup>16</sup> For a more practical reason, normative theorising seems to prefer such clear targets

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<sup>11</sup> Simmons and Martin, "International organizations and institutions"; Martin and Simmons, "Theories and Empirical Studies of International Institutions."

<sup>12</sup> March, *Rediscovering institutions: the organizational basis of politics*; Peters, *Institutional theory in political science: the 'new institutionalism'*; Aspinwall and Schneider, "Same Menu, Separate Tables: The Institutional Turn in Political Science and the Study of European Integration."

<sup>13</sup> Ziirn et al., "Politische Ordnungsbildung wider Willen"; Barnett and Finnemore, "The Politics, Power, and Pathologies of International Organizations."

<sup>14</sup> Caney, *Justice beyond borders: A global political theory*, 5.

<sup>15</sup> Caney, "The responsibilities and legitimacy of economic international institutions."

<sup>16</sup> Additionally, Caney suggests that international institutions differ from states in that they "are likely to have a more culturally heterogeneous population than any state". But given that international institutions do not claim any territorial sovereignty, it seems only confusing to think of them as being populated (by natural persons).

as these international organisations proper provide, but one might also address normative questions about legitimacy and democracy to institutions and practices of a less tangible nature, too.

For institutionalist cosmopolitans of this kind, supranational institutions are, on the one hand, necessary for pursuing global justice, yet, on the other hand, fail to meet cosmopolitan expectations today. Caney, for instance, argues that compared to purely statist framework, supranational political institutions help to ensure that otherwise unwilling states comply with cosmopolitan aims and principles; to solve collective action problems, such as providing public goods like a healthy environment or peace; and to check the and balance the power of states.<sup>17</sup> Buchanan & Keohane similarly argue that global governance institutions can promote international cooperation, construct regulatory frameworks and provide benefits that cannot otherwise be obtained.<sup>18</sup> Buchanan & Keohane imply that a functional division of labour in the pursuit of global justice will eventually develop, and that international institutions play an important part in developing such a cosmopolitan political order.

At the same time, though, current international institutions often constrain states' formal sovereignty and practical autonomy, and individuals, too. Such constraints are not illegitimate as such, Buchanan & Keohane emphasise: those who see international institutions as inherently incompatible with democracy "either beg the question by assuming that the 'will of the people' should not be constrained so as to take into account the interests of those outside their polity or they underestimate the extent to which democracy depends upon global governance institutions."<sup>19</sup> But if international institutions lack legitimacy, "then their claims to authority are unfounded and they are not entitled to our support" – us presumably being 'citizens committed to democratic principles'.<sup>20</sup> If, on the other hand, they are legitimate, then 'we' should support them or at least not obstruct them. Hence, publics must also perceive international institutions to be legitimate:

"Politically mobilized challenges to the legitimacy of these institutions jeopardize the support they need to function effectively, in spite of the fact that these challenges are typically unprincipled and possibly grounded in unrealistic demands that confuse justice with legitimacy."<sup>21</sup>

Unsurprisingly, Buchanan & Keohane' notion of institutions draws on Keohane's career-long scholarship on international cooperation and institutions. Below, I shall return to some of the problems such a conception offers when coupled explicitly with normative claims about legitimacy, etc. Let us just note a few general peculiarities with such a view of institutions.

First, this functionalist conception of international institutions expresses a certain liberal-utilitarian bias in the way it describes the purposes of international cooperative endeavours. Institutions are created because they provide benefits and enhance collective welfare, helping agents realise common interests and liberal purposes, such as saving the environment, fighting poverty or promoting free trade. This indicates a rather naive view of inter-state politics and a managerialist, technical understanding of political problems. Second, this view neglects how disparities of power

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<sup>17</sup> Caney, *Justice beyond borders: A global political theory*, 159f.

<sup>18</sup> Buchanan and Keohane, "The Legitimacy of Global Governance Institutions."

<sup>19</sup> Buchanan and Keohane, "The Legitimacy of Global Governance Institutions"; cf. Keohane, Macedo, and Moravcsik, "Democracy-Enhancing Multilateralism."

<sup>20</sup> Buchanan and Keohane, "The Legitimacy of Global Governance Institutions," 406.

<sup>21</sup> *Ibid.*, 436.

set the terms of international institutions and their outcomes: “States differ in power and they use that power in the creation of international institutions.”<sup>22</sup> As Haggard & Simmons note, the “institutions that emerge in world politics are certainly more likely to reflect the interests of the powerful than the interests of the weak. ... regimes are also arenas for conflict and the exercise of power.”<sup>23</sup>

Hence, axiomatically premising a theory of legitimacy in global governance on such a functionalist, rationalist notion of international institutions brackets many of the difficult moral and political issues that arise out of disparities in wealth and power among states.<sup>24</sup> Admittedly, nobody discussing legitimacy issues in the WTO, the IMF and similar institutions can disregard power asymmetries, and neither do Buchanan & Keohane, but they seem to regard them as anomalous to, rather than as constitutive of, international politics and institutions.

#### A COMPLEX, HYBRID STANDARD OF LEGITIMACY

Buchanan & Keohane offer a three-pronged standard of legitimacy in international institutions, incorporating both substantive and procedural elements. In order to be legitimate, international institutions should (1) enjoy the ongoing consent of democratic states, (2) satisfy the three *substantive* criteria of (a) minimal moral acceptability, (b) comparative benefit, and (c) institutional integrity, and (3) satisfy the *epistemic* criteria that allow external agents to judge whether they satisfy the substantive criteria (2a-c) and to participate in revising their goals, their terms of accountability and their role in pursuing global justice. I shall take issue with each of these elements in turn, but also criticise them as a combined standard of legitimacy.

##### *Consent of democratic states*

Let us start by addressing the first criterion: In order to be legitimate, international institutions must have the ongoing consent of democratic states, as a necessary but insufficient criterion. Before we can assess the merit of this element of legitimacy, we need to consider the reasons B&K offer for rejecting the idea that the consent of states is necessary for legitimacy.<sup>25</sup>

On the one hand, B&K reject state consent as a necessary, let alone sufficient, condition of legitimacy. The notion that international institutions are legitimate if, and only if, states have consented to them has a long standing in international theory, and has been important not least in explaining why states should be bound by international law. Against this notion, B&K argue that to the extent that states themselves are illegitimate, for instance, by lacking domestic democracy and disrespecting human rights, they have no legitimacy to transfer via consent to international institutions. Hence, state consent is neither a sufficient nor necessary condition, they argue:

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<sup>22</sup> Stein, “Neoliberal institutionalism.”

<sup>23</sup> Haggard and Simmons, “Theories of international regimes”; cf. Strange, “Cave! hic dragones: a critique of regime analysis.”

<sup>24</sup> Devoutly committed to the idea that international cooperation and institutions provide welfare benefits and provide the back-bone to a functional division of labour in pursuit of global justice, they also seem to rule out the possibility that institutions might be disassembled, or that it would be a desirable thing.

<sup>25</sup> B&K also dismiss global democracy as a standard of legitimacy, arguing that it would be unfeasible in the foreseeable future, as the social and political conditions for democracy aren’t met at the global level: There is no political structure, no global public and no consensus that a democratic world government “is needed and appropriate.” And they also hold global democracy to be undesirable, where they seem to imply that a global democracy would likely not provide sufficient institutional protections of individual and minority rights.

“To assert that consent, regardless of the character of the state, is sufficient for the legitimacy of global governance institutions, is to regress to a conception of international order that fails to impose even the most minimal normative requirements on states.”<sup>26</sup>

But is that really so? If we claim that an international institution is legitimate if, and only if, all states consent to its exercise of authority, then we have imposed rather extensive normative requirements on states, for instance, not to regard an institution as legitimate if it disregards the consent of states. One need only think of the UN’s sanctions and interventions against certain states in recent decades in order to see that state consent does impose non-trivial normative requirements on states. Traditionally, state consent as a norm of legitimacy has been justified precisely on the grounds that it provides international order a normative buffer against Melian power politics. Hence, one could certainly grant that while state consent is not a sufficient criterion of legitimacy, it might still feature among necessary elements of legitimacy of international institutions to the extent that it serves to maintain international order generally or to promote other desirable values.<sup>27</sup> In particular, state consent might provide international institutions with certain advantages, and some notable institutions, such as the UN, would not exist, let alone be able to enforce their decisions, were it not for their explicit commitment to, *inter alia*, principles of state consent.<sup>28</sup> Thus, the benefits provided by an institution, to speak with Buchanan & Keohane, might feature among the values in terms of which State Consent is justified as a theory of the legitimacy of international institutions.

Buchanan & Keohane, however, dismiss such a justification of State Consent by arguing that “those who take human rights seriously” cannot accept “the fiction that all states – regardless of whether they respect the basic rights of their own citizens – are moral agents worthy of respect”. This is a piece of slipshod reasoning in several steps. First, we could well regard states as moral agents without thinking them worthy of respect regardless of what they do. In deed, much of the work done by the international human rights community seems to be based, implicitly, on the notion that states are moral agents and hence deserve blame or praise depending on whether they respect the basic rights of their own citizens.<sup>29</sup> Additionally, even if states’ moral agency might be shrugged off as a fiction, it might still be a fiction useful even to those who take human rights seriously.<sup>30</sup>

Second, by dismissing State Consent as a criterion of legitimacy, B&K also, in effect, dismiss states as illegitimate to the extent that they fail to meet B&K’s standards of human rights and democracy.<sup>31</sup> But if so, in terms of what should we justify that legitimate states still talk to illegitimate states in international politics, as they often need to do? Are there alternative moral values or standards in terms of which we (or democratic, rights-respecting governments) could fall back on in

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<sup>26</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” ##.

<sup>27</sup> Note that this argument need not be based on a conception of states as moral agents, as B&K imply: One could, hypothetically, justify it in instrumental terms compatible with ethical individualism and cosmopolitanism.

<sup>28</sup> Hirst, Thompson, and Bromley, *Globalization in question*; Nagano, “A critique of Held’s cosmopolitan democracy.” This is not to say that such institutions always practice the principles that they preach, but a commitment to such principles might still be useful.

<sup>29</sup> Risse, Ropp, and Sikkink, “The power of human rights: International norms and domestic change.”

<sup>30</sup> Cf. Wendt, “The state as a person in international theory.”

<sup>31</sup> Cf. Buchanan and Keohane, “The Preventive Use of Force: A Cosmopolitan Institutional Proposal.”

justifying having, for instance, diplomatic relations with such states?<sup>32</sup> One might, of course, regard the existence of illegitimate states as merely an anomaly in non-ideal theory. But for the foreseeable future, they are a fact, and a normative international theorist should not refrain from discussing how to interact with them.

As I said, one plausible defence of state consent as a standard of legitimacy holds that it is instrumental to certain values, and one might even hold that it is instrumental to cosmopolitan values, such as those endorsed by B&K. You could, for example, argue that state consent protects small states against being bullied by great powers, and hence promotes democratic government or the respect for human rights in those smaller states. If we, by the standard of state consent, judge a valuable institution to be illegitimate just because not all states consent to it, we “would purport to protect weaker states at the expense of giving a legitimacy veto to tyrannies.”<sup>33</sup> Besides, they argue that weak states have much to gain from institutions: “Weak states are in a numerical majority in multilateral institutions. Generally speaking, they [weak states] are less threatened by the dominance of powerful states within the institution than they are by the actions of such powerful states acting outside of institutional constraints.” But whether weak states are better off within institutions than outside of them seems to be a highly contentious issue in its own right, and moreover, not all global governance institutions represent weak states on equal terms (in proportion to their numerical majority), or indeed at all.

To conclude, I think there is more to be said in defence of state consent, and B&K seem to construct a straw man rather than a position really worth attacking.<sup>34</sup> More importantly, for now: When dismissing State Consent as a source of legitimacy of international institutions, B&K seem to put themselves in a tension with their notion of what international institutions are. By axiomatically proclaiming that international institutions are *prima facie* justified (if not legitimised) because they provide states with benefits they could not otherwise obtain, B&K implicitly seem to admit that states are moral agents, if only in a thin sense that their welfare gains matter, and not just derivatively. Legitimacy, in the form of their complex standard, is added only as a second layer to this cake. The reason that they need to polemise so sharply against State Consent might be that they are bound by a notion of international institutions that implicitly recognises State Consent.

At any rate, facing the critique that some states are illegitimate, a friend of State Consent might plausibly retreat to argue that what counts is the consent of *democratic* states (DSC). Hence, an international institution should be considered legitimate if it enjoys the consent of most or all democracies.<sup>35</sup> While B&K regard this criterion as more reasonable than State Consent and keep it as a *necessary* condition, they offer three reasons against considering it a *sufficient* condition for legitimacy. First, they argue, consent must be voluntary in order to have a legitimising force, and for some states, standing outside an institution such as the WTO is not a real option. Second, “the chains of delegation stretching from individual citizens to state agents” are so long “that the impact

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<sup>32</sup> As we shall see, that some illegitimate states participate in international institutions, such as the UN, is not a reason for B&K to regard such institutions as illegitimate. As long as the institution enjoys the continuing support of democratic states and fulfills the substantive and epistemic criteria, it is legitimate. But outside of institutions, states presumably will need to have bilateral relations to non-democratic, rights-violating states, and the question is on what grounds such relations can be justified, if we accept B&K’s arguments against state consent.

<sup>33</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” 414.

<sup>34</sup> Notably, neither Buchanan & Keohane nor Caney, who also dismisses State Consent, refer in their articles directly to any actual scholars who have argued in favour of State Consent.

<sup>35</sup> Cf. Caney, “The responsibilities and legitimacy of economic international institutions.”

of the popular will on how political power is being used becomes so attenuated as to be merely nominal.”<sup>36</sup> Third, “not all people who are affected by global governance institutions are citizens of democratic states, so even if the ongoing consent of democratic states fosters accountability, it may not foster accountability to them.”<sup>37</sup> Still, they argue that if an international institution would impose its rules on democratic states without their consent, it would violate the right of self-determination of the people of those states. Hence, “a necessary condition for the legitimacy of global governance institutions is that they enjoy the consent of states that are democratic *and* that do a credible job of respecting the rights of their citizens.”<sup>38</sup>

Now, if we accept B&K’s arguments against regarding DSC a sufficient criterion, would not those arguments also undermine DSC as a necessary criterion? They argue that the consent of democratic states is an unattainable ideal, since many democratic states face no real choices and since the bucket of democratic delegation is so leaky so as to make its legitimating force merely nominal. But if it is unattainable, why include it in the standard as a necessary condition? The only reason to keep this as a necessary-but-insufficient criterion would be if the other elements added (substantive, epistemic) would somehow serve to invalidate the objections (involuntariness and thin delegation), and make democratic state consent attainable, but B&K offer no argument that that would be the case.

Moreover, while B&K here seem preoccupied with weak and strong states, their criterion says nothing about how to weight the voices of democratic states in consenting to international institutions. B&K stress that not all democratic states need to consent, as they might sometimes have legitimate or illegitimate reasons not to comply. So no democratic state holds a veto. But other than that, how should their consent be weighted? Should India and Iceland, for instance, count the same, or should their consent rather count in proportion to their population? Should we count democracy as a dichotomous quality, and then admit all states that are found to be reasonably democratic, or rather as a graded quality, where they hold an influence proportional to the quality of their democracy?<sup>39</sup> And what should we do when democratic states disagree, as they often do? Depending on how we answer such questions, DSC, as a necessary element, would have radically different implications for our legitimacy judgments. In democratic theory, such problems are hardly new – we need to specify a metric by which to balance the equality of collective units (constituencies, federal subjects, etc.) against the equality of individual citizens. Democrats and cosmopolitans may sometimes have reasons to accept tipping the balance towards units, so as to make the political equality of individuals less than perfect.<sup>40</sup> But such metrics require that we ascribe at least some independent value to the units as such.<sup>41</sup>

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<sup>36</sup> For a more extensive critique of democratic delegation as a source of legitimacy in international institutions, see Agné, “The Myth of International Delegation: Limits to and Suggestions for Democratic Theory in the Context of the European Union.”

<sup>37</sup> Cf. Caney, “The responsibilities and legitimacy of economic international institutions”; However, David Held argues that an exclusive club of democracies would provide leaders of authoritarian states with a compelling reason to democratise, simply to regain legitimacy in the eyes of their own populations: Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, 232.

<sup>38</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” 414f.

<sup>39</sup> For a proposal of influence proportional to democraticness, see Monbiot, *Samtyckets tidsålder: Manifest för en ny världsordning*.

<sup>40</sup> Føllesdal, “Federal inequality among equals: A contractualist defence.”

<sup>41</sup> State Consent avoids this problem by simply treating all states as equals, and disregarding their relative population and power.

But one might suspect that B&K rather have in mind that democratic states should have roughly equal weight, given their conception of institutions. They solve the problem of state consent by simply posing DSC as an uncontroversial standard: Assuming that all agents are (sufficiently) democratic states, roughly equal in terms of power, population, etc, one could conclude that, by means of their ongoing collective, if not unanimous, consent, such states could convey legitimacy to international institutions, assumed in turn to provide and distribute benefits equally among states. But those assumptions are utterly unrealistic and false for most actual existing international institutions. Still, DSC is just one component of their complex standard, so we shall need to address the two other components as well.

*Misrepresenting political disagreement as epistemic uncertainty*

Besides Democratic States' Consent, B&K present three substantive criteria which an international institution must satisfy in order to be legitimate: minimal moral acceptability (MMA), comparative benefit (CB) and institutional integrity (II). That is, an international institution must not persist in committing serious abuses of basic human rights, it must provide benefits that could not otherwise be obtained, compared to other feasible institutional arrangements, and it must consistently live up to the goals in terms of which it justifies its own existence. B&K acknowledge two limitations on the applicability of substantial criteria: (a) the *problem of factual knowledge*, as some institutions may fail or decline to give the information other agents need to assess whether they satisfy the substantive criteria, and (b) *the problem of moral disagreement and uncertainty*, as people disagree about “whether some global governance institutions should meet higher moral standards [than minimal moral acceptability]” and as “we do not have a coherent idea of what the institutional division of labour for achieving global justice would look like.”<sup>42</sup> These two problems, they argue, can be remedied by the epistemic criteria, to which we shall turn next.

First, however, something needs to be said about the substantive criteria, and their qualifications. I shall argue that B&K conflate disagreement and uncertainty in moral and political matters: They underestimate disagreement and overestimate uncertainty, and by expressing disagreement as uncertainty, they can present their epistemic criteria as solutions to problems that are not really of an epistemic nature.

For instance, they seek to establish respect for basic human rights as a substantive standard of minimal moral acceptability, which leads them to the question of what basic human rights there are. As we all know, this turns out to be a highly contested issue, not only among philosophers but in political and legal practice, too. B&K, however, argue, first, that while “basic interest theorists of human rights” disagree about what rights belong on the list and what particular rights contain,

“there is agreement [...] that the list includes the right to physical security, to liberty [...], and the right to subsistence. Assuming that this is so, we can at least say this much: [...] institutions [...] are legitimate only if they do not persist in [violating] the least controversial human rights.”<sup>43</sup>

Now, even if ‘basic interest theorists of human rights’ would happen to agree what the least controversial human rights are, B&K give us no reason why we should accept their agreement as a founda-

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<sup>42</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” ##.

<sup>43</sup> Ibid.

tion for a substantive criterion of legitimacy.<sup>44</sup> Of course, having ruled out the consent of states or of democratic states as a standard of legitimacy, they can't settle for the basic rights that such agents minimally might agree upon, so instead they seem to appeal to the authority of a small clique of philosophers.<sup>45</sup>

Second, perhaps seeking to conceal this abyss of moral and political disagreement, they present it as a matter of epistemic uncertainty. While emphasising the negative, minimal duty MMA implies, they also assert that we should expect global governance institutions "to meet higher standards as we gain greater clarity about the scope of human rights."<sup>46</sup> But the problem is not that we lack knowledge or clarity, it is that we disagree, and that disagreement goes all the way down from determining whether an entity such as an international institution has violated someone's basic human rights, to the question of whether it makes sense to talk of human rights at all. Hence, MMA becomes a criterion without a very plausible foundation.

Similarly, when proposing comparative benefit as another substantive criterion, B&K seem to underestimate just how deep political conflict might be, or transform it into an epistemic problem. Reasserting the functionalist notion of institutions, they argue that international institutions are primarily justified in terms of the benefits they provide for social agents:

"The justification for having global governance institutions is primarily if not exclusively instrumental. The basic reason for states or other addressees of institutional rules to take them as binding and for individuals generally to support or at least not to interfere with the operation of these institutions is that they provide benefits that cannot otherwise be obtained." (422)

Hence, if an institution fails to take measures that would make it provide those benefits more efficiently or effectively, people might start questioning its legitimacy, B&K argue. They take this element to be "relatively straightforward" in itself; "the most difficult issues [...] concern trade-offs between comparative benefit and our other criteria."

But they notably shun away from answering: *cui bono?* Comparative benefit for whom? While they do mention states and individuals, they do not specify how those subject audiences' preferences should be weighted if in conflict. Think, for instance, of an international institution aiming to prevent irregular migration, which might provide benefits for governments in affluent destination countries as well as for governments in poor emigration countries. But such an institutional arrangement might also create tangible disadvantages for presumptive migrants, as well as for broader populations in both source and destination countries. A different migration regime might reverse the benefits and the disadvantages.<sup>47</sup>

So unless B&K specify clearly the subjects whose benefits and disadvantages *legitimately* count, a utilitarian cost-benefit calculus will give no guidance for institutional legitimacy.<sup>48</sup> Moreover, precisely because conflicts over institutions are conflicts over outcomes, deciding between different

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<sup>44</sup> For a liberal critique of basic interest theories of human rights, see Gourevitch, "Are Human Rights Liberal?."

<sup>45</sup> It might even seem more plausible to appeal to the authority of, say, international human rights courts, or of a wider international human rights practice (cf. Beitz, *The idea of human rights*.)

<sup>46</sup> Buchanan and Keohane, "The Legitimacy of Global Governance Institutions," 420.

<sup>47</sup> Andrew Kuper suggests a similar example in his critique of Rawls's two-stage original position. Cf. Kuper, *Democracy beyond borders: Justice and representation in global institutions*.

<sup>48</sup> This is a well-known problem in utilitarian theory. Cf. Ellis, "Utilitarianism and international ethics."

institutional alternatives is never just an *epistemic* problem, a “straightforward” matter of determining relative efficiency and efficacy.<sup>49</sup>

The third and final substantive criterion is institutional integrity, by which B&K suggest that one should presume “an institution [...] to be illegitimate if its practices or procedures predictably undermine the pursuit of the very goals in terms of which it justifies its existence.”<sup>50</sup> That is, institutions should practice what they preach (which presumably implies that institutions should satisfy this criterion by *living up* to their goals, rather than by justifying their existence in terms of less demanding goals). B&K seem to subsume certain principles here: A legitimate institution should act impartially, consistently, predictably, etc.<sup>51</sup> Two things are worth noting about such familiar constitutional principles: First, they are procedural rather than substantive, and connecting them to legitimacy assumes that we would or should regard institutions as legitimate if they abide by such procedural principles, and regardless of the substantive outcome. Second, while such principles will certainly be difficult to judge by in their own right, they also make the problem less epistemic and more polemic: The question is not to know what the institution’s goals are and whether it lives up to them (a considerable epistemic problem in its own right), but rather whether they treat cases similarly, consistently, impartially, etc, the judging of which should in principle be easier for an outsider.<sup>52</sup> It would, therefore, provide more open, accessible standards for outsiders to dispute the institution’s legitimacy.

All in all, the problem in specifying what sort of institutional order would be necessary for the pursuit of global justice is not epistemic: that we don’t know. Indeed, the recent cosmopolitan turn in political philosophy has revived the old genre of world order reform proposals, debating whether global justice requires a ‘global basic structure’, and what a cosmopolitan political order ought to look like.<sup>53</sup> Rather, the problem is antagonistic and polemic: that we disagree over both means and ends. By framing what is essentially *political disagreement and conflict* as problems of *epistemic uncertainty*, B&K can imply that the solutions, too, are of an epistemic nature. But doing so might seem like searching for one’s keys under the streetlight, rather than in the dark where one lost them.

#### *Epistemic solutions to polemic problems*

The third element of the complex standard are a set of epistemic criteria, focusing on accountability and transparency. B&K critically assess two concepts often suggested to improve the legitimacy of institutions: Accountability and transparency, both of which they find insufficient.

For instance, many international institutions exhibit a high degree of accountability, but to the wrong accountability holders, such as the biggest donor countries, and hence B&K conclude that

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<sup>49</sup> Besides, sometimes inefficiency might serve an institution’s legitimacy better than efficiency, a possibility ruled out by the functionalist view of institutions.

<sup>50</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” 423.

<sup>51</sup> For instance, they cite a study showing that the IMF inconsistently applied its own lending standards, and suggest that “if the WTO claims to provide the benefits of trade liberalization to *all* its members, but consistently develops policies that exclude its weaker members from the benefits of liberalization, this undermines its claim to legitimacy.”

<sup>52</sup> Weaver, “The politics of performance evaluation: Independent evaluation at the International Monetary Fund”; Gutner and Thompson, “The politics of IO performance: A framework”; Lipson, “Performance under ambiguity: International organization performance in UN peacekeeping.”

<sup>53</sup> Caney, *Justice beyond borders: A global political theory*; Held, “Principles of cosmopolitan order”; Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*; Kuper, *Democracy beyond borders: Justice and representation in global institutions*; Pogge, *World poverty and human rights: Cosmopolitan responsibilities and reforms*.

“accountability per se is not sufficient; it must be the right sort of accountability.”<sup>54</sup> As a minimum, they suggest that institutional agents must be held to account to act in ways that fulfil the substantive criteria of minimal moral acceptability and comparative benefit. But this narrow sense of accountability is not sufficiently dynamic, they argue, because moral disagreement and epistemic uncertainty about the goals of institutions and their role in the pursuit of global justice prevent us from determining what the ‘terms of accountability’ ought to be: what standards of accountability ought to be employed, who the accountability holders should be, and whose interests the accountability holders should represent.<sup>55</sup> However, although people both disagree and are uncertain about accountability as such, B&K suggests that legitimacy depends on whether institutions allow people to sort out such disagreements and uncertainties:

“the legitimacy of global governance institutions depends in part upon whether they operate in such a way as to facilitate principled factually informed deliberation about the terms of accountability. There must be provisions for revising existing standards of accountability and current conceptions of who the proper accountability holders are and whose interests they should represent.”<sup>56</sup>

Hence, B&K argue, as moral disagreement and uncertainty prevent them from specifying the ‘terms of accountability’, they specify instead a second-order criterion for debating what accountability requires.

In order for an international institution to be accountable in the broad sense, it must also be transparent in a broad sense. Merely publishing information about how the institution works would not suffice even for narrow accountability: The institution must also provide, at reasonable cost, information that is “properly integrated and interpreted” and directed to those currently entitled to hold it accountable, who must also be “adequately motivated to use it properly in evaluating the performance of the relevant institutional agents.”<sup>57</sup> Broad transparency, however, requires that outside agents, such as NGOs, can also access such information, in order to contest the current ‘terms of accountability’ and to criticise the institution, its fundamental goals and “its role in the pursuit of global justice.”<sup>58</sup> Hence, the transparency criterion lays a responsibility on institutional agents to

“offer public justifications of at least the more controversial and consequential institutional policies and must facilitate timely critical responses to them. Potential critics must be in a position to determine whether the public justifications are cogent, whether they are consistent with the current terms of accountability, and whether, if taken seriously, these justifications call for revision of [those terms].”<sup>59</sup>

Since it might be difficult for outside agents to assess what an institution does, B&K suggest that broad transparency might serve as a proxy for determining whether an institution fulfils substantive

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<sup>54</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” 426.

<sup>55</sup> They seem to think, however, that the pursuit of global justice is an uncontroversial goal, and that we just disagree about, for instance, the role of international institutions in that pursuit.

<sup>56</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” 427.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., 428.

<sup>59</sup> Ibid.

criteria. That is, we can suspect that institutions which fail to provide accountability holders with useful information also fail in other, substantive regards, such as respecting human rights or reaching the goals in terms of which they justify their existence.

Now, a first problem in this view of accountability and transparency is how to ensure that the various agents involved abide by these rules. How, for instance, to ensure that agents stick to ‘principled factually informed deliberation’? How can we assure that institutions provide ‘properly integrated and interpreted information’ (whatever that means)? And how can we assure that accountability holders are ‘adequately motivated’ to use information ‘properly’? Providing and processing information is costly, and hence, B&K would need to offer institutionalised mechanisms to motivate agents to employ information in ways that serve its accountability-enhancing function (think, for instance, of ombudsmen, public audit offices and other institutionalised accountability agents).<sup>60</sup> On the other hand, given that information is not just neutral, evaluating the performance of international organisations opens up for political manoeuvring.<sup>61</sup>

Second, the same problems that B&K raise with determining the terms of accountability seem likely to follow along to the second-order level too, to the extent that second-order deliberation sets the terms and limits of first-order accountability. For instance, who can legitimately participate in ‘principled informed deliberation about the terms of accountability’, in ‘revising existing standards and conceptions of who the proper accountability holders are and whose interests they should represent’? And, more importantly, who should decide? Political deliberation is not just a ‘factually informed’ conversation among truth-seeking, reasonable gentlemen: At the end of the day, a coercive, collective decision has to be made.

Therefore, third, B&K also misconstrue accountability, even of the second order, as an epistemic condition grounded in more or less deliberative procedures aimed at consensually grounded agreement.<sup>62</sup> While accountability has an element of public reason-giving, merely giving reasons is never enough: Accountability is antagonistic. To cite another work co-authored by Keohane, “For an agent to be accountable, the agent must face adverse consequences if his or her actions are inconsistent with the values and preferences of the principals.”<sup>63</sup> To put it more directly: to agents, accountability means that “when they screw up, all hell can break loose. [...] Accountability means punishment.”<sup>64</sup> Accountability necessarily relies on the possibility that actors will disagree, that the accounts given are unsatisfactory, and that if their disagreement is irresolvable, accountability holders impose a cost, a sanction, a punishment, on agents. Thus, accountability dialogue always occurs between parties in an authority relationship, which is “crucially different from that presupposed by democratic debate which takes place in a public space between citizens conceived of as equals.”<sup>65</sup>

## CONCLUSION: THE ‘WHO?’ OF LEGITIMACY

Suggesting a complex standard, B&K naturally invite questions about how to rank and order between its different elements. They propose DSC as a necessary condition, with certain qualifications, whereas they admit that the three substantive criteria are not “necessary conditions *simpliciter*”

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<sup>60</sup> Kuper, *Democracy beyond borders: Justice and representation in global institutions*, 107f.

<sup>61</sup> cf. Gutner and Thompson, “The politics of IO performance: A framework.”

<sup>62</sup> Cf. Karlsson, “Democrats without borders: A critique of transnational democracy,” 197ff.

<sup>63</sup> Grant and Keohane, “Accountability and abuses of power in world politics.”

<sup>64</sup> Behn, *Rethinking democratic accountability*, 3.

<sup>65</sup> Mulgan, “‘Accountability’: An ever-expanding concept,” 570.

*iter*”, as there might be cases when we think an institution is legitimate in virtue of fulfilling the substantive criteria partially. They are also not threshold conditions; they are rather counting principles: “the more of them an institution satisfies, and the higher the degree to which it satisfies them, the stronger its claim to legitimacy.”<sup>66</sup> They also suggest that their complex standard of legitimacy satisfies a complex standard of democracy, incorporating the criteria of *responsiveness* (equal regard for the fundamental interests of all persons), *deliberation* (in collective decision-making) and *autonomy* (mutual respect for persons as beings who are guided by reasons).<sup>67</sup> Other than that, they refrain from specifying exactly how the three basic elements relate to each other.

One might read the complex standard simply as a laundry list of good, liberal values: human liberty, security and subsistence, collective welfare, accountability, impartiality, transparency, public deliberation, democracy (and everything subsumed under its umbrella: collective self-determination, minority protection, responsiveness, autonomy), even global justice, etc.

I think this is a sensible way to understand the standard: We might assess international institutions (and states too, for that matter) in terms of how they serve to promote or demote such values, and seeking to fulfil them may be an important part of what makes such institutions legitimate. Such values may sometimes, or even often, conflict – if not else, because money, time and other resources necessary for their realisation are scarce – and so we’ll need to prioritise, balance and compromise between them.

And such priorities, balances and compromises, as well as their justifications, will require a greater sensitivity to context and situation, than an abstract, algorithmic formula of legitimacy could ever hope to incorporate. Instead, it turns our attention to how to exercise political judgment in choosing between such competing, incompatible values. Perhaps we should settle for a more modest, empty conception of legitimacy, something akin to Bernard Williams ‘basic legitimation demand’, which states that the legitimate exercise of all political power must be justifiable to each subject.<sup>68</sup> As a standard, it is minimalistic, and says nothing about the reasons, or values, in terms of which political power must be justified. But it requires that we specify something which B&K’s standard leaves implicit, at best: Who the subjects of legitimacy are.

The problem of not specifying the subjects of legitimacy becomes evident when B&K summarise their complex standard. Their subjectless language conceals that they shift between levels, which we can see clearly if we simply insert the subjects omitted:

“when the comparative benefit condition is satisfied, the institution provides [states with] goods that are not readily obtained [by states] without it. These goods, however, can be readily provided only if coordination [among states] is achieved, and achieving coordination without excessive costs requires that the relevant agents [states] regard the institution’s rules as presumptively binding – that is, that they [states] take the fact that the rule is issued by the institution as a content-independent reason for compliance. The instrumental value of institutions that satisfy the comparative benefit condition also gives individuals generally a content-independent reason not to interfere with the functioning of the institution.”

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<sup>66</sup> Buchanan and Keohane, “The Legitimacy of Global Governance Institutions,” 424.

<sup>67</sup> They also conclude that their complex standard satisfies their six desiderata for a standard of legitimacy, which seem tailored precisely for that purpose.

<sup>68</sup> Williams, *In the beginning was the deed realism and moralism in political argument*.

Here one might ask: Why should the instrumental value of global governance institutions, that they provide *states* with certain benefits, count as a content-independent reason for *individuals* not to interfere with the functioning of the institution? Leaving out the subjects is not only a problem of style, but also of substance, which is especially problematic for professing cosmopolitans such as Buchanan & Keohane. Cosmopolitan theorist often write in the passive voice, Saladin Meckled-Garcia points out, but any normative theory is insufficient unless it demonstrates who is supposed to shoulder the principles and duties it proposes:

”cosmopolitans [tend] to express their views in terms of principles without explicitly specifying a subject—an agent and sphere for the principles [...] many cosmopolitans [insist] on discussing aims and principles in the passive voice. [...] there is no default position on this matter, and any theory of justice must specify, and justify, which subject has the relevant responsibilities. Without a plausible subject any putative principles are in fact incomplete.”<sup>69</sup>

Without properly addressing who the subjects are – for instance, *to whom* international institutions provide benefits – Buchanan & Keohane undermine their own normative cosmopolitan commitments, since a plausible answer to the ‘who’ question is: states, or even: great powers.<sup>70</sup> Therefore, Buchanan & Keohane seem to express what David Long has called a mere “liberalism per analogy”, which puts states in a relation to international institutions analogous to the relation between individuals and states in plain liberalism.<sup>71</sup> In such a state-centric international theory, conventional liberal values such as individual liberty are, at best, reduced to a secondary motive. Hence, their implicit ‘methodological nationalism’ (implied in their ontological conception of what international institutions are) stands in stark contrast to the radical normative and methodological individualism of cosmopolitanism.<sup>72</sup>

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<sup>69</sup> Meckled-Garcia, “On the very idea of cosmopolitan justice: Constructivism and international agency.”

<sup>70</sup> Raymond Geuss invokes Lenin’s “Who whom?” as a recurring question the answer to which defines the political: Geuss, *Philosophy and real politics*.

<sup>71</sup> Long, “The Harvard school of liberal international theory: A case for closure.”

<sup>72</sup> I’m not necessarily endorsing either cosmopolitanism or its state-centric alternative; I just point to an inconsistency in B&K’s argument.

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