

Democratic Legitimacy, International Institutions and Cosmopolitan Disaggregation

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ABSTRACT

The paper explores Thomas Christiano's conception of international legitimacy. It argues that his account fails to fully appreciate the instrumental constraints that international legitimacy imposes on national democracies. His model of Fair Voluntary Association articulates the transmission of political legitimacy through a double aggregation of political consent. First, it "pools" its authority from the foundational cosmopolitan claims of individuals involved in a deeply interdependent social world; it then translates this source of legitimacy to international organizations through state consent. However, this model fails to enforce compliance with the cosmopolitan standards and commitments regarding vulnerable populations. The paper argues (i) that the global standards of legitimacy operate as objective criteria of instrumental legitimacy for the reflective evaluation of democratic states, (ii) that the demand of consistent compliance with these cosmopolitan goals imposes external constraints on the institutions of domestic democratic deliberation; and finally, (iii) that if democratic states fail to implement reforms in this direction, then their citizens have the legitimate prerogative to disaggregate their cosmopolitan contribution and direct it to the global institutions that officially realize these goals.

Keywords: International legitimacy, global justice, cosmopolitanism, democracy, equality, Christiano.

1. GLOBAL LEGITIMACY AND STATE CONSENT

What is the most legitimate form of global authority we can reasonably hope for? Thomas Christiano (2010) presents an insightful exploration of this challenging question. His essay contrasts the aspiration to democratize international institutions directly and a defense of a Fair Democratic Association (FDA) among states as the best feasible option. He thinks an empirical evaluation of the required preconditions for the development of a legitimate democratic regime favor the latter. Such conditions presuppose equality of stakes among all those bound by the political system. Here, to have roughly equal stakes means that the same political system shapes and affects one's main interests with an overall intensity equivalent to that affecting other fellow members. This shared subjection and participation varies across different issues and topics but the overall balance of trade-offs must be equivalent. Therefore, all members subjected to this political decision-making authority have strong reasons to identify their wellbeing and prosperity with the goods and services regulated by the public authority. This is what Christiano calls "a common world". Therefore, the condition of equality of stakes requires the existence of deep interdependency among co-members.

Once this condition of equality of stakes is met, Christiano then defends his conception of legitimacy for the decision-making structure that regulates the deep interdependency of a group that shares a strong interest in enjoying a common world. The question then is: by what right should any of these individuals accept the decisions imposed on them? Christiano's conception of *public equality* defends that the strongest reasons to accept the political authority under these circumstances are those that reflect that the political decision-making advances the interests of all members in an equal way. Christiano's conception expresses the intrinsic value of collective self-government by minimizing the chances of over-inclusion and under-inclusion. Therefore, the distribution of political influence has to prevent that those not relevantly affected by a problem could impose the solution on those affected. Among members, this risk is neutralized in the overall tradeoffs of the political game within a common world. When distinctive minorities have stable preferences that only contingently and tangentially align themselves with the hegemonic view, then there is a risk of consistent subordination to majoritarian interests. The existence of permanent minorities undermines public equality because it publically manifests a breach in the mechanisms of inclusion, access, interaction, and deliberation "in a common world".

This is, however, as Christiano states, a cosmopolitan moral principle, insofar as all individuals' interests affected by the political system are given equal consideration (2010: 121). To put it in different terms, the conception of public equality holds that all equal stakeholders under a political order should be equal shareholders in decision-making.

However, for Christiano, the proper political realization of a cosmopolitan principle of equal consideration is not a global democracy. The implementation of a democratic system for a global order beyond the nation-state would not track asymmetries in stakes and would create permanent minorities. According to Christiano, the state community seems to be the most realistic scope for the realization of public equality. Consequently, the most legitimate form of global authority that we could reasonably hope for is a Fair Democratic Association (FDA) of highly representative states, legitimized through the consent of its sovereign members. Therefore, specific matters and particular interests that transcend the limits of the common world are better dealt with through specific negotiations and agreements that represent the expected contributions and compensations among the affected parties.

We could reconstruct the normative structure of Christiano's proposal for a FDA as the articulation of three main elements:

Voluntary Agreement: In its ideal form, a Free Democratic Association determines its own terms of cooperation through international negotiation, adjusting their complementary skills, needs, and contributions. If the exercise of bargaining power differentials produces unacceptable conditions, the weaker party can always exit the organization. In a similar way to civil society associations, the legitimacy of these international associations rests on the voluntary acceptance of the terms of cooperation ("*Volenti non fit injuria*").

Proto-Constitutional Constraints: In addition to these freely consented terms, Christiano admits a set of external constraints as principles of international society that are also justified through its formal value for the constitution and coexistence of decent and representative societies, like security and war conventions, the principle of honoring pacts and treaties ("*pacta sunt servanda*"), and the basic protections of *ius cogens* and human rights. This family of "traditionally observed principles" (customary international law) constitutes the basic scaffolding of the international society (Christiano 2010: 122-123).

Standards of Reinforced Cooperation: A subsequent and thinner level in this international architecture is constituted by the network of institutions that articulate the cooperation around the goals of trade, poverty eradication, and climate change (Christiano 2012a: 385-390). These three dimensions represent an important degree of interdependence that is also crucial for the success of the different national societies. These areas are of crucial, vital interests. We can conceive this set of subjects as a hybrid structure that combines a voluntary bargaining process with proto-constitutional constraints. Treaty negotiations among states are still marked by the asymmetries of power, but they incorporate some degree of receptivity to the needs of developing countries, vulnerable populations or the environment as benchmarks (IMF), socio-environmental safeguards (World Bank), conventions, exemptions, etc. The degree of interdependence may justify a preferential treatment for developing countries but it is not thick enough to justify its regulation through a global democratic system.

According to Christiano then, moral cosmopolitanism would be realized through membership in a democratic state that is a member of a FDA. I will argue in the following sections that this articulation of memberships is deeply problematic. In fact, the claim that the FDA would reproduce some of the intrinsic obstacles to supranational coordination that characterize our international order of sovereign states can be defended. The normative structure of the FDA is based on voluntary state-agreements, but the representative institutions of modern democracies are designed in ways that favor domestic interests over foreign duties. Therefore, there is an institutional design problem that prevents the realization of moral cosmopolitanism through double membership.

2. PUBLIC EQUALITY AND MORAL COSMOPOLITANISM

Christiano's conception of public equality cannot overcome the problem of articulation between national citizenship and cosmopolitan responsibility. In order to show this difficulty, I will compare three alternative understandings of the condition of public equality as a realization of moral cosmopolitanism: a) as an existential condition; b) as a criterion for legitimacy; and c) as a prescriptive duty of justice. The *existential* reading states that stakes-equality is a (sufficient) condition for the implementation of public equality. As a criterion of legitimacy, the principle demands that democratic membership be coextensive with the

scope of stakes-equality. Finally, the prescriptive interpretation just affirms a moral duty to establish a maximally inclusive institutional order in which all individuals could see their interests affected and taken into account in an equal way. These alternative readings imply concomitant qualifications on the scope of public equality.

As an *existential condition*, it identifies the scope of the doctrine following the factual conditions of the world. The pre-existing institutional scope limits the set of individual claims to equal political influence. The validity of these claims is intrinsic to a practice that regulates the sphere of political membership, it is constitutive of its network of interactions, it is embedded in its relational structure of interdependence, and it is incorporated in the expectation of iterated, reciprocal cooperation. This social world constitutes the type of relevant interests shared by all relevantly affected, and they differ in kind and intensity from those of outsiders. Consequently, the validity of their claims to participation in the decision making differs also in kind and intensity. Even if affected, outsiders cannot be equally affected in the same way as constitutive members; therefore, equality demands that their claims are subject to specific qualifications.

This interpretation of the intrinsic value of democracy assumes the existence of a common world and derives the legitimacy of the democratic system from the “pooled rights of all persons to have a say in the common world they live in” (Christiano 2010: 122). This is a cosmopolitan value insofar it rests on the moral personality of all individuals that are “pooled” together as *demos*. However, the criteria for inclusion and exclusion are not cosmopolitan in the sense that it cannot be claimed that they are independent from the social, cultural, and national characteristics of individuals. If we consider that it is the identification of the precondition of equal stakes, which determines the scope of the *demos*, then these structural and institutional factors have a determining role in the configuration of the common world. If the common world reflects these particularities, and the projects and interests of the members are intertwined with its reproduction, then the constituency is shaped by the common world, and the kind, type, and nature of the interests affected is distinctively and idiosyncratically determined by the internal conditions of this community. Every deeply interdependent political system expresses a common world which should be regulated in a way that reflects public equality. But the reproduction of this common world becomes a constitutive feature of the conceptions of the good of the citizenry. This general interest becomes the national interest. Additionally, under this reading, the realization of the values of freedom and equality could be conceived as the allegiance to the

institutions that produce a particular *vivere libero*. Therefore, the existential condition of equality of stakes may model the latent cosmopolitan value of democracy in a republican-communitarian way. This means that the factual dependence on the existing structures of interdependence imprints a domestic and status quo bias in democratic deliberation.

The second interpretation is related to the question of global pluralism. It defends the view that wherever the equality of stakes condition obtains, the only legitimate form of political authority is one that expresses public equality. The emphasis here lies in the range of acceptable political regimes. Christiano argues elsewhere for a *pro tanto* human right to democratic self-determination, but not for its external and forceful imposition through military intervention (Christiano 2011). The justification offered for this range of permissible toleration is congruent with the conception of public equality: occupied peoples have no resources to check that the “liberating” forces treat their interests equally in a public and justifiable way. For that, interventionist forces would need to be subjected to a common supranational authority, which as discussed in the essay commented on here, would also lack the conditions for direct democratic governance. This observation, which aims to protect weaker parties from foreign domination, can be extrapolated to other dimensions of necessary cooperation to achieve effective self-government. Depending on the mercy of strangers to realize democratic self-determination may easily lead to being at the mercy of strangers. The argument in favor of a right to self-determination implicitly admits that without explicit thresholds and impartial supervision, cosmopolitan duties remain unaccountable. If the commitment with the protection and promotion of self-determination is real, then the system of cooperation cannot be entirely voluntary.

The third reading of the equal stakes condition is the more problematic one. In contrast to the previous two, it defends a prescriptive cosmopolitanism. This normative claim demands an inclusive extension of the basic structures of relational interdependence to a global scale. Cosmopolitanism then becomes an imperative duty of justice. A strong version of this prescriptive interpretation would hold that our deeply exclusionary global order is the product of a permanent minority that keeps a vast majority of the global population in conditions of segregation. Global inequality of stakes just tracks the disproportionate vested interests of these privileged populations in the distribution of goods and services. Therefore, the institutional political order should offer conditions for deeper global integration and substantive reparations. The conditions for self-determination must be justified against this ideal background of global equalization of stakes.

These three critical renderings of Christiano's condition of public equality show some of the difficulties in the articulation of an intrinsic conception of democratic legitimacy with cosmopolitan commitments. The existential premise produces a domestic bias; the legitimacy condition tends to tolerate scenarios of under-realization; and the prescriptive interpretation demands a strong justification for any permissible departure from an ideal standard of global democracy.

Although it is easy to share Christiano's reasonable concerns regarding global democracy, it is also easy to underestimate the external limitations of state consent for the realization of cosmopolitan goals. Our status quo bias contributes to the naturalization of the global cost of practical unaccountability and under-fulfillment of external duties. Legitimation through explicit state consent contributes to the tacit legitimation of the consequences of its intrinsic limitations.

Christiano is aware of the weak spots of an intrinsic conception of democratic authority and is open to the implementation of corrective mechanisms if they have sufficient instrumental justification. These internal limits can be compensated with outcome standards (minimum preference satisfaction), a bill of rights, and judicial review (Christiano 2008: 260-300). The case of the external limits however, presents specific challenges to the conception of legitimate authority in sovereign democracies. The tacit legitimation of the under-fulfillment of the duties to non-citizens cannot be countered through the usual corrective factors like political competition, electoral sanctions, public exposure, or reputational challenge (Christiano 2012b). Unlike domestic limits where those affected have a say, in the case of foreign responsibilities, neglect is overlooked or tacitly rewarded. Addressing the challenge of the external limits of democratic authority implies that Christiano's remarkable conception would need to take a substantive instrumental turn and subject domestic deliberation to de-centering mechanisms.

This paper defends that external limits to democratic authority (duties to non-citizens) also justify corrective institutional reforms. In particular, it defends that the external standards embedded in the FDA should be incorporated for the instrumental assessment and cosmopolitan legitimation of domestic democracies. State consent as a criterion for international legitimation must be qualified not only regarding the internal representativeness of the states, but also according to their cosmopolitan performance. The case of climate change will help us explore the cosmopolitan deficits in democratic deliberation and state consent.

3. INTERNATIONAL COMPLIANCE AND INSTRUMENTAL AGENCY

We all have important stakes in the stabilization of climate, though some countries may behave irresponsibly regarding their level of emissions. Christiano (2015) acknowledges that the model of universal state consent may produce inefficient results when it has to accommodate these non-cooperative states. In this case, Christiano admits that it may be legitimate to sacrifice the requirement of universal state adhesion in favor of a coalition of the willing with the capacity to coerce the irresponsible states into compliance. However, this alternative club model would be legitimized by the moral value of the goal itself, not by their limited club consent. This would be a case of instrumental legitimacy applied to international organizations. This case of legitimate interference also shows that the states affected by the sanctions system have their international legitimacy undermined due to their inobservance of some global goals that weren't actually validated and specified through binding treaties (the universal method). Therefore, the objectivity of this goal derives from a hypothetical reconstruction of a counterfactual Fair Democratic Agreement among reasonable states. Their legitimacy is related to the implementation of a hypothetical agreement that no party could reasonably reject. Here the club would act as a legitimate state agency or court, trusted with instrumental authority to impose duties on less reasonable parties.

Part of the normative appeal in climate change negotiations consists in that national emission rights are calculated according to the population on a per capita basis. Therefore, there is a cosmopolitan dimension implicit in state consent. On the other hand, state consent is an unsatisfactory design for the introduction of considerations of historical compensations and reparations. States represent national interests through their executive branches in international fora, but these agreements usually need domestic ratification. This process of accountability is designed to prevent that a president could favor foreign over national interest. This *risk* is kept in check by parliamentary representatives that also have an intrinsic interest in maximizing the interests of their local constituencies. Consequently, there is an institutional limit to what even the most enlightened democratic leader can concede. The terms of treaty-making, be they universal or club-based, are constrained by the epistemic and deliberative conditions of domestic constituencies.

Even self-determining democracies may fall short of recognizing these global duties due to the representative and cognitive limitations of the

national public sphere. These limitations are particularly salient in the case of climate change, where the effects occur on long term scales and where individual contributions are embedded in habitual life-styles of the domestic common world. National representative systems are hijacked by an electoral short-termism and biased against foreigners and future generations. The problem of climate change negotiations is a good case to defend the introduction of a level of parliamentarian representation in international institutions beyond the national identification of the citizenry. This additional chamber of cosmopolitan deliberation may complement state negotiations and help reframe the terms of consent. Although democratic governance in international institutions may be an ideal goal, there is room for mixed regimes that may reinforce the cosmopolitan legitimacy of state consent, like population weights, consultative chambers, and further parliamentarization.

The forceful imposition of an emissions-reduction regime through the club model implies that, if representative states have their sovereign legitimacy undermined for failing to realize global goals, the counterpart is also true, i.e. that representative states become more legitimate according to their instrumental contribution to global goals. Therefore, democratic systems should incorporate instrumental constraints in their intrinsic legitimacy. This means that the legitimacy of its consent depends on a public deliberative system that incorporates de-biasing mechanisms that take into account global duties.

4. GLOBAL LEGITIMACY AND COSMOPOLITAN DISAGGREGATION

Climate change presents a hard case due to the difficulty of establishing a fair distribution of burdens. Despite the uncertainty surrounding climate change, most of its unwelcome consequences are worsened by the existing rates of global poverty and human vulnerability. These global disasters are the recurrent subject of official declarations, specific agendas, and global programs. Let's take for example the case of an established normative consensus, like the international agreement to contribute 0.7% of GNI to development aid. Let's suppose that this global goal is a fixed reference point legitimized through state consent. This agreement is invested with the intrinsic legitimacy of the consenting parties, but once established, it also becomes an objective standard for the evaluation of the parties' performance. Year after year, every state deliberates about its budget allocations and the weight given to the fulfillment of its global duties. With some exceptions, the trend is consistently disappointing. Democratic

regimes systematically neglect their aid duties because, as they are not given an equal stake in the deliberation, or sufficient representation in electoral campaigns, public opinion, or the media, their interests are easily overshadowed by the electorate's more parochial concerns. But if we agree that global duties constitute external standards of legitimacy, then representative systems that are intrinsically biased against the fulfillment of these obligations cannot be fully legitimate.

Global duties related to subsidiary responsibilities regarding basic human rights and development belong to the proto-constitutional architecture of global legitimacy. They can be justified as contributions to the consolidation of representative communities in which the affected individuals can see their interests realized as members of their common world. Additionally, aided states would become members of the international community and would contribute as *bona fide* members to a global architecture of cooperation. When states systematically neglect the duties of global contribution they also undermine the very concept of state consent as an intrinsic source of international legitimacy. Consequently, we can no longer sustain that a plurality of representative states is the best incarnation of the democratic value of moral cosmopolitanism. The systematic infra-realization of the global duties of their citizens undermines the egalitarian moral standing that is the foundational value of the democratic conception of public equality.

Christiano concedes that some of the most decisive international organizations publicly show unequal concern for the interests of the developing countries and that this consistent feature would support some preferential treatment for them in their institutional design (Christiano 2012a: 385). This diagnosis assumes that there are limits to voluntary agreement (hard bargain). If there are independent moral red-lines that frame the deliberations of the basic international organizations, then they should be embedded in the global institutional structure. Consistently, these red-lines should constrain and reflexively reconstitute the internal architecture of the *bona fide* members of the global community. Global duties of development aid are constitutive imperatives of a global community which their ultimate constitutive members are individuals with an equal moral status. Therefore, common worlds and institutional political designs that are intrinsically biased against the realization of these global duties cannot be compatible with the global framework of legitimization.

If we hold with Christiano that an international system of democracies is the best incarnation of moral cosmopolitanism, then we will need to revisit the idealized independence of the multiple common-worlds and

their intrinsic conceptions of legitimacy. The ideal of democratic self-determination must be conceived within the institutional constraints of global justice. Therefore, it is necessary to evaluate the legitimacy of a political system also in accordance with its capacity to progressively implement more demanding standards of justice and, at least, not to block the reform efforts. These minimal conditions of gradual perfectibility, generally applied to the precarious legitimacy of international institutions, should also be reflexively incorporated into their state members. Otherwise, the conception of public equality isolated from this external evaluation would be more appropriately defended as a republican-communitarian expression of thick social equality, and not as a cosmopolitan value. It justifies allegiance to the institutions that create conditions of public equality and freedom, but it does not face its intrinsic limitations to make these conditions available for all.

If the democratic system embraces the normative ideal of moral cosmopolitanism as the foundational conception for the “pooling of individual rights and interests”, but its representative system repeatedly neglects the counterpart global duties linked to this conception, then individual members are being accomplices in the systematic neglect of the duties owed to their foreign equals. Individual citizens are therefore participants in a system of political authority that publically contributes to the global subordination of the legitimate interests of outsiders. Even those citizens aware of the depth of this institutional violation of the equal moral status of outsiders know that the articulation of the domestic space of public opinion and political deliberation is designed in a way that normalizes the disregard of global duties and over-represents the domestic electoral interests. Claims for internal reform of the system in line with an effective accountability for global duties also face similar hurdles. Therefore, the condition of progressive perfectibility is not realized for domestic representative systems and their claims to full political legitimacy must be qualified.

Why should a citizen then comply with a political order that undermines the claims of moral equality? From the previous account we could derive that it is *prima facie* justified to question the legitimacy of the national taxation authority. Taxation is, after all, one of the main aggregative systems that fail to pool and represent the cosmopolitan dimension of national membership. Under these current conditions of undermined international legitimacy, citizens may be justified in transferring their share of tax contributions to those international institutions that embed and realize the commonly agreed global goals. Otherwise, full compliance with democratic authority constitutes a violation of the moral cosmopolitan

status of insiders and outsiders alike. Because, “being at home in an unjust world cannot be a contribution to one’s wellbeing” (Cf. Christiano 2008: 63).

5. CONCLUSION

The Fair Voluntary Association model articulates the transmission of political legitimacy through a double aggregation of political consent. First, it “pools” its authority from the foundational cosmopolitan claims of the individuals co-implicated in a deeply interdependent social world; then it translates this initial legitimacy to the collective membership in an international organization through state consent. However, as we have seen, this model fails to meet global standards of legitimation. It has an original sin related to the historical conditions of development of the modern territorial system of nation states and to its idealization as isolated common worlds.

Christiano’s strategy is to compare two extensions of the value of moral cosmopolitanism that underpins democratic legitimacy, from the modern state to international organizations. One attempt is the direct translation of individual representation to democratic governance of the global institutions; the alternative is treaty-building through state consent. But the distinction is not exhaustive. None of the alternatives are perfect but there are intermediate and perfectible models that perform better when translating legitimacy and global justice: dual chambers with a popular parliament and a state senate, or a system of population-weighted double majority. The point is that a democratic state’s consent is no guaranty of international legitimacy, especially when dealing with claims from outsiders in contexts of low enforceability.

Global standards of legitimacy operate as criteria of instrumental legitimacy for the reflective evaluation of democratic states. The demand of consistent compliance with these cosmopolitan goals imposes external constraints on the institutions of domestic democratic deliberation. If reforms in this direction are not implemented, then democratic citizens have the legitimate prerogative of disaggregating their participation in the national “pool” and discharging their cosmopolitan fair share through the global institutions that officially realize these goals.

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