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## Political Legitimacy, from the National to the International

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# Political Legitimacy, from the National to the International

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## Abstract

The article explores the question of legitimacy at the national and international levels. It starts by showing that in the modern era it is mainly in the context of the national realm that political legitimacy has been recognized and treated as a key issue. The article explains why this has been the case. It continues by indicating that at the international level political legitimacy is equally important. It highlights this idea by unpacking some of the pivotal distinctions and themes that structure the question of political legitimacy internationally, such as: we/them; inside/outside; universalist/particularist; and system/society. It ends with giving historical illustrations of these structural distinctions at work.

**Keywords** International legitimacy · National level · International level · Structural distinctions of international legitimacy · Westphalia

## 1 Introduction

In this article, I explain why it is in the context of national domestic politics that political legitimacy has been historically the focus of analysis. In addition, I argue that from this state of affairs we should not conclude that the problematic of political legitimacy is of no significance at the international level. For political legitimacy is equally important internationally. I end the article with a few historical examples illustrating how the key distinctions at work in legitimacy internationally operate.

## 2 The National Level as the Focus of Political Legitimacy

In the previous articles of this special issue, among the key aspects that I have put forward concerning political legitimacy in general is the fact that political legitimacy amounts to the governed recognizing the right of the governors to lead and, to a certain

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extent, be entitled to the perks of power. I have also highlighted that this right to govern, which is a situation in which both political power and obligation tend to be justified, calls for conditions to be met. These conditions entail those in power delivering services to the governed. These services have to at least respond to and reasonably satisfy the core needs and rights of people, of which security is one. These core needs and rights are themselves associated with the values and the sense of the possible (and the expectations they create) that are constitutive of the identity of a given context and the actors operating in it. In the process, what is outlined is the responsibility of those in leadership positions and of political institutions. This includes the modalities of exercise of power and how they view the overall arrangements of the social environment.

These features of legitimacy in the framework of politics as community, while of a general nature, are well suited to politics at the domestic or national level. This echoes the fact that this domestic or national level constitutes one of the main contexts in which since the beginning of the modern era people have come to live and in which they have come to experience a sense of community. From this perspective, much of political philosophy in the past centuries has been about exploring the conditions under which justice and, conjointly, political legitimacy can be achieved in the community of a country, in the national domestic context of a community. Needless to say, as it is in the West that the “national” idea has emerged, this is an orientation that has been especially significant in the Western tradition of modern political philosophy. For instance, among the authors who have dealt, in one way or another, with the issue of political legitimacy and have focused on the need to account at the national domestic level for the existence of political authority and institutions, including the state, and their policies, this has certainly been the case of Hobbes, Locke (Simmons 2001), Rousseau, Weber and, more recently, Habermas (Habermas 2018, pp. 122–145),<sup>1</sup> to name just a few.

I should add here that in the expression “national domestic” mentioned above, the use of “national” does not refer to a specific type or form of political and social organization of the “national”, as can be inferred with the idea of the “nation-state” that has emerged and blossomed in the continental European West and, subsequently, has often been seen as the model that a country should adopt and develop to qualify as a modern country or nation. A country can have political institutions, it can have a state, as is most of the time the case nowadays, this state can be strong or weak, but this does necessarily make this country a nation-state. For example, the Chinese scholar Wang Hui challenges the understanding of the process of modernization of China as one going from empire to nation-state and, therefore, the idea that China is a nation-state. For him, the “nation-state” characterization fails to describe fully the diversity and specificity of the history and nature of the polity called “China” (Wang 2014, p. 28).<sup>2</sup> But despite this, China is obviously a country—and a country that, in what is now the common usage of the term, embodies some sense of the “national” (and a sense of the “national”

<sup>1</sup> Jürgen Habermas has also explored the nature and conditions of possibility of political legitimacy beyond the national level. For example, consult Jürgen Habermas, *Philosophical Introductions: Five Approaches to Communicative Reason*.

<sup>2</sup> As China becomes more and more influential globally, this may have far reaching implications for the evolution of the international system. This is a question Wang Hui alludes to in *China from Empire to Nation-State*. Interestingly, the term “nation-state” does not fit either the legal and political culture of the United States.

that, although it entails a state, cannot be really described, following Wang Hui, as a “nation-state”).

This is to say that my use of “national” points to a rather general meaning, as basically signifying the existence and the contours of a country, of a national realm in the context of which the political sphere, whatever its form is, organizes and manages the community/society and the relations among actors.

Against this background, among the reasons that account for the fact that the question of political legitimacy has been traditionally an object of much study at the national domestic level, seven can be highlighted. These reasons are interconnected and related to the development of social integration and political authority, which can include the state.

- First, there is the fact, just alluded to above, that to a significant extent the experience of a sense of community takes place, especially in the modern period, at the country or national level. To be sure this does not mean that this has been always and everywhere the case. This does not exclude either the fact that people experience a sense of community locally as well. But the community experience is so widespread today at the national level that it is the one with which people identify the most. As such, even when the local experience of community is strong, it is likely to be embedded in, to be part of a broader community experience, that of the national, that of a country. From this perspective, it is at the country/national level that the social and political organization of the community/society is shaped and that political power as a whole is conceived of and exercised. This renders it in need of being accounted for and justified, which points to the importance of political legitimacy.
- Second, this is all the more the case considering that, by bringing a multiplicity of spheres of activity and of actors under one roof, the movement toward national integration makes societies more complex. In the process, as an integrated complex national community/society requires a management system (including a political system of management) that is more sophisticated than the one of a basic community and that is likely to stand as separate and above the community/society and its members (think about bureaucracy as part of a state apparatus), societies tend to become politically more differentiated. Against this background, both greater social complexity, including as it is managed by the political sphere, and political differentiation emphasize the need for justification and legitimacy. Reasons have to be put forward to account for the value, or the added value, of the higher level of social complexity (and the imperative of keeping this complexity together, as a well-functioning one) and political differentiation.
- Third, there is the issue of the monopoly of the use of force nationally and the imperative of legitimizing it. In this regard, no matter how political power contributes to the social and political organization and management of the community/society, it is geared toward controlling and monopolizing the use of force. In a way, we could say that it is in the DNA of political power to do this, although the forms this takes can vary with the types of political systems, regimes and even the evolving situation of power relations within them. For instance, Christian Reus-Smit, reflecting on the history and transformation of political structures in Europe at the beginning of the modern era, stresses the following: “The transition from

medievalism to absolutism involved two interrelated processes: the centralization and territorial demarcation of authority, and the rationalization and consolidation of hierarchy.” (Reus-Smit 1999, p. 93). These processes included a monopolization of the use of force in the institutions of the absolutist monarchy. So, regardless of the differences at play, in the organization and management of a community/society by political institutions and leaders, one of their key objectives is to have, as much as possible, exclusivity over the use of force. Since this monopoly over the use of force is destined to epitomize the inequality of power relations between the governors and the governed, and in fact highlights, enhances and radicalizes (use of force is an extreme form of power) this inequality of power relations, it is very much in need of good justification. This is particularly the case at the national level, considering that historically this monopolization of the use of force has been a significant feature of nation building, while at the same time, somewhat paradoxically, putting on display and projecting the legitimacy of nation building and making it in need of justification/legitimacy.

- Fourth, the use of monopolized force itself is another element that makes political legitimacy of special importance nationally. To start with, the fact that such use of force is the product of a situation of monopoly points in the direction of those who hold it and, when deploying force, of their responsibility and the questions of legitimacy that arise. In this context, in addition, it is both externally (international) and internally (domestic) that the use of force brings about issues of legitimacy. When it comes to the external use of force monopolized at the national level, it is the case with conflicts with other countries, as made obvious by the criteria of just war theory (*jus ad bellum* and *jus in bello*). It can also be the case in times of peace, for example, when a country uses force against an individual belonging to another country, in particular a powerful one: not respecting the rights of this foreigner can be a source of much trouble. The internal use of force is perhaps still more susceptible to the introduction of problems of legitimacy. Because it deals with and targets members of the community and their rights, it is prone to being sensitive and demanding from a legitimacy standpoint. Hence, at least in societies that take legitimacy and the rights of their members seriously and do not rely mainly on violence and the spread of fear, the internal use of force and its justification (legitimacy) tend to be limited to rare circumstances.

This explains why a healthy community/society, while eager to monopolize the use of force, is also eager to constrain it, externally and internally. This may be all the more the case in a national democratic society, where people and how they are treated are a key benchmark in the evaluation and judgement of political legitimacy.

- Fifth, to the extent that people live in and identify with the national community, it makes sense to have their needs and rights formulated, negotiated and expected to be implemented at this level. It also makes sense to have political leaders and institutions and policies made accountable in this environment based on how seriously they take these needs and rights. This state of affairs contributes to making the question of legitimacy, along with the one of justice, front and center nationally, bringing to the fore questions such as: what in the national community is owed to members of soci-

ety? What are the responsibilities of political institutions and leaders toward people and how do they fulfill these responsibilities? How to ensure social cooperation and political obligation? In other words, how a sense of justice and political legitimacy is part and parcel of the experience of national life becomes a natural and very pressing concern, in fact probably the most natural and pressing concern. This is illustrated by how these issues have been at the core of scholarship on social life in the national realm in fields like law, political philosophy, political science, economics and to some extent sociology. This has led, for instance, John Rawls to argue that “the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (Rawls 2005, p. 7), and that, consequently, the central problem for a theory of justice is to identify the principles by which the basic structure of society can be appraised and that it is on the extent to which political institutions succeed in implementing these principles that their political legitimacy rests.

- Sixth, the fact that national societies, particularly beginning with Western modernity, have become more reflective, and more critically reflective of the context in which they exist and of which they are a component,<sup>3</sup> has helped as well to give great significance to the question of political legitimacy nationally. In this regard, from the point of view of history two major related transformations have played a key role. They have had to do with a profound change in the justificatory foundations of social and political order. The first transformation concerned the detachment of reality, including of social and political reality, from God and God’s law. This detachment from divine anchoring made it possible for the justification of political power and the organization and management of society to stop being out of reach of human consciousness. This phenomenon, which became one of the defining features of modernity, did not happen overnight. It took place gradually, over a long period of time, with the old somewhat continuing to exist in the new. (Blumenberg 1985; Gauchet 1997) For example, in *The Moral Purpose of the State*, Christian Reus-Smit, exploring the systems of metavalues (justificatory foundations) of a society that define the broad parameters of legitimate state action and analyzing the transition from the medieval world to the one of absolutism, writes:

“If absolutist rulers were to command authority, if they were to justify their dictates as legitimate, then their identities as social actors, rightfully ordained with decision-making power, had to be established. To instill authority and inspire fealty, the identity of the absolutist state had to be grounded in prevailing cultural values. It had to resonate with existing systems of meaning, especially those defining legitimate power and rightful social action. ... (P)olitical elites of the sixteenth and seventeenth centuries drew on prevailing Christian and dynastic values when fashioning the postmedieval order. Rejecting the transnational authority of the Church did not entail a rejection of Christianity

<sup>3</sup> Of course, this does not mean that they are fully reflective and in a state of total transparency to themselves.

per se, rather the natural and social universe was reimagined to invest territorial monarchs with authority direct from God.” (Reus-Smit 1999, p. 94).

But, as God’s law lessened its grip on the justification and legitimacy of reality over time, it became possible for people more than before to distantiate themselves from this reality and objectify it. This applied to social and political reality at the country level. In the process, human beings came to think that to a large extent it could be understood and studied in secular terms (Heilbron 1995, pp. 2–6), and that people may have the means and the right to influence the society in which they live in ways more in line with their liking.

This became all the more the case when this first transformation was complemented by a second one, i.e., the emergence and development of democratic ideals and ideas, and the dynamics they entail, as terms of reference for political legitimacy. Indeed, if more than in any other political system of legitimacy democracy makes the individual and its rights the cornerstones of political legitimacy, it also makes, more than in any other system of legitimacy, the social and political arrangements of society exposed to questioning and challenge. Hence the fact that in democracy political legitimacy tends to be a constant object of debate. More specifically, the fact that democracy has this effect on political legitimacy is associated with at least four of its characteristics/requirements.

First, the recognition and celebration of the rights of individuals as central to democratic political legitimacy is not a static affair. Considering the expectations and aspirations they generate, they are forward oriented and likely to evolve, as such triggering calls for a better realization of the existing rights and for more, new rights (themselves based on and expanding existing rights). Second, the universal nature of rights and access to rights that is put forward in a democracy<sup>4</sup> seems to run contrary to the fact that even democratic societies, including the best intentioned of them, do not appear to be able to entirely eliminate unjustified inequalities, that is to achieve concrete and complete universality of rights and access to rights (Furet 1999; Richir 1974, pp. 7–74).<sup>5</sup> At best they minimize them as much as possible, at worst, against their better angels, to use an expression made famous by Abraham Lincoln in his first inaugural address as President of the United States,<sup>6</sup> they participate in encouraging them (Coicaud 2019).<sup>7</sup>

<sup>4</sup> Democracy and the form of political legitimacy associated with it are largely about “de-kinshipisation”. While traditional socialization and politics conceive the “we versus them” divide and access to resources in narrow terms, particularly based on and legitimized by kinship, democratic values are benchmarked upon universality and, consequently, (relatively) open membership and access to resources.

<sup>5</sup> The quest for entire and absolute equality, for making people and their living conditions more or less the same and totally transparent to each other, is an unrealizable and dangerous utopia, as shown by the social and human costs of revolutionary politics in the twentieth century. See for instance Francois Furet, *The Passing of an Illusion: The Idea of Communism in the Twentieth Century* and Marc Richir, “Révolution et transparence sociale”, in J. G. Fichte, *Considérations sur la Révolution Française*. From this perspective, the question of justice and legitimacy in democratic politics becomes how to achieve relative equality or acceptable and reasonable inequalities and differences in a world that, while mindful of the dangers of revolutionary messianism, has still to be more than only “what is” and inspires people and societies to be better so that a genuine human community can flourish. Calculating reasonable inequalities and hierarchies is both a crucial and challenging task.

<sup>6</sup> March 4, 1861.

<sup>7</sup> Think about the growing gap between rich and poor that is at work in a number of democratic societies.

Third, the consent of the individual, exercised around fundamental values that center around their rights, encompasses the official right to have an opinion on politics and challenge established powers.<sup>8</sup> This is enshrined in the civil and political rights of individuals (like freedom of speech and right to vote). Fourth, the key values at the core of democracy, such as equality, liberty, popular sovereignty, make it all the more important and pressing to justify, to legitimize the political differentiation of power between the governors and the governed.

As a whole, these characteristics/requirements give to democracy fluid, plastic and imperfect progressive and inclusive dimensions that democratic legitimacy has both to keep up with and account for if it wants to have and maintain its credibility. This is not an easy enterprise. The imperative to yet difficulty of satisfying such characteristics/requirements at the same time ask for political legitimacy and make it elusive. As a matter of fact, in truth it calls for more legitimacy to satisfy legitimacy, which can only make legitimacy ever more elusive. The end product of this situation amounts to what is more often than not the paradoxical status of political legitimacy in democracy: at its highest and much under stress. This is illustrated by the disenchantment that currently affects various Western democracies, with the rise of populism that accompanies it and contests the legitimacy of the status quo and of the establishment (elites), if not at times that of liberal and representative democratic institutions and ideas themselves.

- Seventh, and lastly, although today countries, as part of globalization, are more and more interconnected and interdependent, most ordinary citizens, apparently to the surprise of those living in the upper stratum of society,<sup>9</sup> continue to have

<sup>8</sup> Out of the exercise of this right, democratic legitimacy is not only on display but is strengthened and made more legitimate—this assuming, of course, that the challenge is taken seriously by power holders and that, as a result, they adjust and improve their performance if necessary.

<sup>9</sup> In an October 8th, 2018 blog posting, Larry Summers, former Treasury Secretary (1999–2001) under President Clinton, confessed discovering that the reality of the United States seen from “the ground” is very different than seem from the top: “Driving across the US gave me a different perspective on the American economy: Economists like me see the world through the prism of models, fit to statistical data and tested against market realities... But there are other ways of gaining understanding about an economy and its workers. This was brought home to me last month when I accompanied my wife on a trip different from any I had ever taken. We drove for 2 weeks on two-lane roads from Chicago to Portland, Ore., across the Great Plains and Rocky Mountains. The larger cities we passed through included Dubuque, Iowa; Cody, Wyo.; and Bozeman, Mont... We were also struck by how remote the concerns of the coasts seemed... The conversations we overheard hewed close to local matters. I have always taken it for granted that broadened opportunities for young people are a good thing and that disadvantaged parents would be among the greatest champions of that idea. Now I see more nuance. When we visited one university and spoke with some of its recruiters, they told us about the ambivalence of parents in their rural state. Many ranchers and Native Americans wanted to see their children educated but feared they would lose their attachment to the family way of life. The phrase “way of life” is, I have come to think, an idea that those concerned with political economy could usefully ponder. It is fashionable to talk about business leaders and cosmopolitan elites who are more worried about the concerns of their conference mates in Davos, Switzerland, than those of their fellow citizens in Detroit or Düsseldorf, Germany. They are blamed for provoking a backlash against globalization. What I saw on my trip was how many profoundly different ways of life there are within the United States. I began to understand better than I had those who live as their parents did in smaller communities closer to the land... Americans want to live in very different ways. Perhaps more appreciation of that on the part of those who lead our society could strengthen and unify our country at what is surely a complex and difficult moment in its history.”



local/national lives and therefore evaluate politics and its impact at this level, based on their daily personal experience. Against this background, what seems to be the incapacity of most national politicians to see their country through the lens of regular people, let alone of the have nots (the way in which the political establishment is inclined to look down upon them may explain this<sup>10</sup>), what seems also to be the shrinking leverage of these politicians on the evolution of the national economy and societies altogether, especially with the transnational economic sector, at least in the West, a sector which seems to be less and less committed to the national welfare and has a political influence for which it has no mandate, can only make political legitimacy a hot button, so to speak. In fact, this is likely to undermine the legitimacy of both capitalism and democracy and makes one wonder about a possible way forward.

### 3 The Importance of Political Legitimacy at the International Level

The counterpart of the historically high level of national integration and the light that it has shone on the question of legitimacy nationally has been a relatively low level of international integration, with the impression that political legitimacy internationally is not that central. Compared to what exists in the national realm (at least in a developed and well-functioning country), international socialization (here simply understood as the adjustment of actors to their international environment through the regulation of their relations via values, norms, etc.), international institutionalization (understood as the establishment at the international level of structured organizations embodying codified procedures and practices) and the sense of international community are somewhat thin. Average citizens, experiencing a sense of belonging first and foremost nationally, tend to also feel that the international sphere is remote from their immediate concerns,<sup>11</sup> which lessens their expectations and demands for accountability toward it.

This contributes to giving the idea that the issue of political legitimacy is not critical internationally. And it is true that from the national perspective, the problematic of legitimacy at the international level can appear marginal. After all, to a large extent it is not from the point of view of international legitimacy, of legitimacy as it is conceived and operates internationally, that national political leaders and their legitimacy are evaluated and judged. It is on a national basis.<sup>12</sup> For example, it is in the national setting that politicians are voted in and voted out.

<sup>10</sup> In June 2017, the newly elected French President Emmanuel Macron referred to people at the bottom of society as “les gens qui ne sont rien” (“People who are nothing”). A few years earlier, in 2014, it was alleged, convincingly, that the socialist French President François Hollande was referring, humorously (or so he thought), to poor people who cannot afford proper dental care as “les sans-dents” (“The without teeth”).

<sup>11</sup> Interestingly, the expectations and demands toward the international level and its institutions, like the United Nations, can be high when the national realm is weak. It can be the case with struggling developing countries. Unfortunately, this can be a source of disappointment since for a number of reasons the capacity of the UN to deliver on the ground is rather limited.

<sup>12</sup> As we see below, this statement needs to be nuanced.

That said, the fact that the international level, once again compared to a developed and well-functioning country, is less socialized, less institutionalized and less of a community does not imply that political legitimacy has no place, and no place of importance internationally. This type of thinking is in part the captive of the domestic analogy, leading to making the national level the yardstick of everything (Suganami 2008).

To be sure, international life is different from national life. For instance, it is arguably more challenging to constrain state actors in the international sphere than to constrain individual actors nationally. As such, to make state actors, in particular the powerful ones, comply with international law is a challenging task. Among other things, this is what invites realist scholars of international relations to see international law as a rather ineffective and inconsequential type of law (Goldsmith and Posner 2005),<sup>13</sup> and to think as well that legitimacy internationally does not have much relevance.

Yet, without claiming that legitimacy is all there is at the international level, the fact of the matter is that it is a significant factor and, probably, increasingly so. This is the case because the question of legitimacy is at the heart of some of the most vital and debated (if not contested) issues of international relations and international law. Earlier I alluded to the importance of legitimacy in connection with just war. But think also about the centrality of legitimacy in relation with questions like, just to list a few, self-determination, secession of a country and creation of a new one, state recognition, tensions between the demands of national sovereignty and those of human rights, international humanitarian interventions, etc. Anybody would be hard pressed not to recognize that at stake in each of these situations is identifying what is the right course of action, what is legitimate and what is not, and that how this is handled is likely to have an influence on the international system, its evolution and its legitimacy. In this regard, the steadily growing body of scholarship dealing with the problematic of legitimacy in international law and international relations is a telling illustration of the fact that it is more and more an object of interest (Falk et al. 2012; Brunée and Toope 2010; Meyer 2009; Buchanan 2004; Roth 2000; Franck 1990; Clark 2005, 2007).

The time seems to have passed when the study of international law was mainly about describing the existing norms, rules and institutions and their evolution without fundamentally articulating this with the issue of legitimacy in its various aspects. Similarly, in international relations, while relations of power, state competition and national interest considerations continue to be questions that attract much attention, and rightfully so, the fact that countries are increasingly connected and interdependent encourages their examination while also taking into account matters of legitimacy internationally.

More specifically, the significance of legitimacy at the international level unfolds in the context of the interactions between the national and the international realms and their actors. This is to say that the modalities of political legitimacy arise internationally against the background of key distinctions or themes. These distinctions and themes play a key role in framing issues of the political legitimacy at the

<sup>13</sup> It is not only specialists of international relations who can have a realist understanding of international law. It can be the case with international law scholars as well. See Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law*.

international level. There are four them: we/them; inside/outside; universalist/particularist; and system/society. I review them below.

- The first of these distinctions or themes is the one of “we/them”. From this perspective, the “we” (self) is to be understood as much as the “we” of a collection of individuals (individual actors) assembled in a national community as of a collective entity itself, a country (collective actor). Conjointly, the “them” (others) can be as much other collective entities, i.e., other countries, as other individuals, foreigners belonging to other national entities/countries. As such, this distinction can be analyzed in relation with three other distinctions that build on it: inside/outside; universalist/particularist; and system/society. In their book *International Relations in Political Thought* (Brown et al. 2003, p. 6) Chris Brown, Terry Nardin, and Nicholas Rengger convincingly argue that these three themes recur over time when it comes to the interactions between the national and the international levels and their actors, with implications for how questions of legitimacy are framed and addressed (Brown et al. 2003, p. 6).
- “Inside/outside” refers to relations between collectivities, and how collective identities are forged and where and how the domestic/international line is to be drawn. As Brown, Nardin and Rengger indicate: “The key notion here is that individuals find themselves part of a collectivity with an identity which distinguishes them from others.” (Brown et al. 2003, p. 7). This can include how the outside helps to constitute the inside, for example, how the existence of external enemies, outsiders, can contribute to the constitution of insiders, of fellow countrymen, but it can also include how insiders relate to outsiders.
- The distinction “universalist/particularist” concerns the normative orientation of members of a collectivity toward “their” collectivity and their relationship and the one of their collectivity to the wider whole. In this context, Brown, Nardin and Rengger state:

“Universalists regard their identity as part of a local collective body—state, city, or whatever—as less significant than their identity as part of the wider whole... On the other side of the divide, particularists give their primary allegiance to local as opposed to universal notions of identity, or, more accurately, refuse to see the claims of the universal as, even potentially, in opposition to the claims of the local.” (Brown et al. 2003, p. 9).

The authors add that another aspect of this “universalist/particularist” theme has to do with the different conceptions of the rights and duties owed to one another by the collective entities themselves rather than by their members. From this perspective, they stress:

“As with the orientations of individuals, there is a range of possible positions, here, each of which has been advocated at one time or another. One position is that collectivities have responsibilities only toward their own members and that relations with other collectivities rest simply on the contingencies of power and interest. These relations may be regular and patterned, that

is, they may form a system, but they are not normatively grounded... On the basis of the historical record, it seems reasonable to say that any international order whose members do not acknowledge some kind of obligation towards one another will be unstable and short-lived. Those orders that have persisted for substantial periods of time... have been based on a normative framework which involves collectivities acknowledging each other's rights and duties." (Brown et al. 2003, p. 10).

- The theme “system/society” presumes the existence of regular contacts between collectivities and focuses on the quality of these contacts and how they are managed differently in an international “system” and in an international “society”. According to Brown, Nardin and Rengger, the idea of international society (Linklater and Suganami 2006; Buzan 2004)<sup>14</sup> corresponds to an international life that is integrated and governed by norms and laws, being understood that the nature of the normative and legal ties between collectivities can vary, from the minimum required for coexistence to the far more extensive of rights and duties that can be at work in international relations as regulated by international law in the late twentieth century and early twenty-first century. In contrast, the notion of international system is more power and anarchy oriented, relying for instance on balance of forces (Brown et al. 2003, pp. 10–11).

Brown, Nardin and Rengger, in their presentation of these themes, which echo and build on the “we/them” theme, highlight the distinction at play in each of them, between “inside” and “outside”, “universalist” and “particularist” and “system” and “society”. This dimension of distinction is of course important (these themes are established on the principle of distinction). But there are more elements at work in the themes and these additional elements are useful to have a fuller understanding of the relations between the themes and the problematic of legitimacy internationally. Three are especially significant. They are the relations of mutual dependency, continuity and plasticity that exist between the two terms of each of the themes.

First, concerning the relationship of mutual dependency that exists between the terms composing each of the themes, this rests on the fact that each of the two terms are not defined and understood independently. They are in relation with one another, in perspective, and it is on this basis that they are contrasted. In this regard, in the mutual definition and understanding of each of the terms, the starting point and point of reference of the definition and understanding is the “we”, “inside”, “particularist”, which functions like a “self”, a self that is looking outward. As such, the self (“we”, “inside”, “particularist”), while being dependent on the other side of the

<sup>14</sup> Although a number of scholars of international relations have used and developed the notion of “international society” in a variety of ways, it is most associated with the “English School” of international relations, initiated by a group of academics working in the United Kingdom in the 1950s and 1960s, particularly Martin Wight and Hedley Bull. For an overview of the origins, history and trajectory of the English school, see Andrew Linklater and Hidemi Suganami (2006), *The English School of International Relations: A Contemporary Reassessment* and Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalisation*.

divide, i.e., “them” and “outside”, for its definition and understanding, occupies a commanding position and serves as a benchmark. Although it is less straightforward and obvious, this is also the case with the theme “system/society” since, here too, the starting point and point of reference of actors in how they relate to international life, either in the framework of a system or in one of a society, is themselves, their sense of self.

Second, the distinction between the terms that comprise the themes does not exclude there is also a relationship of continuity between them. For instance, how “outside”, “universalist”, and “society” are viewed and shaped tends to be based on the projection at the international level of traits at play in the (domestic) context of the “we”, such as the “inside”. From this perspective, it is unlikely that a country that disregards human rights at home will take them seriously internationally. Conversely, a country taking human rights seriously domestically is likely to endorse them at the international level (Anderson 2003, pp. 5, 6, 276).<sup>15</sup> Incidentally, this does not mean that it will truly defend them seriously internationally, i.e., as seriously as at the domestic level. Continuity does not imply same level of priority. Moreover, continuity does not signify that it goes only in one direction. For as alluded to before, the “outside” can contribute to influencing the “inside”. But by and large the projection is from “in” to “out”. Needless to say, the continuity is particularly at play when a powerful country exerts its power of projection and externalization.

Third, the relations of distinction, mutual dependency and continuity that exist among the terms of the themes “we/them”, “inside/outside”, “universalist/particularist” and “system/society”, and therefore the meaning of these terms and themes, including their inclusive and exclusive character, are not set forever. They evolve, in the process displaying much plasticity. It is precisely in the midst of this evolution and plasticity that the formulation and reformulation of legitimacy internationally happens in connection with how “we” and “them”, “inside” and “outside”, “universalist” and “particularist”, and “system and society” and their relations are conceived and change over time. In particular, keeping in mind that it is in the framework of “we”, “inside”, universalist”, “society” that right holding is most celebrated, this framework can extend or retract vis-à-vis “them”, “outside”, “particularist” and “system”. If it extends, it can incorporate more actors (collectivities or/and individuals) from the “them” and “outside” side and consequently grow the scope of right holding and right holders. If it retracts, it incorporates fewer actors from the “them” and “outside” side and reduces the scope of right holding and right holders associated with being part of “we” and “inside”. Depending on extension or retraction, the experience of community, of membership and belonging, and of right holding, will vary and, with it, the sense of political legitimacy at the international level.<sup>16</sup>

<sup>15</sup> However, the contrary can also be the case. Carol Anderson, in *Eyes Off the Price: The United Nations and the African-American Struggle for Human Rights* has shown that while the United States was pushing for human rights internationally in the context of the negotiation on and drafting of the Universal Declaration of Human Rights (adopted in December 1948), it was also resisting having the situation of African-Americans in the United States at the time addressed in a human rights framework.

<sup>16</sup> This can also affect the sense of political legitimacy at the national level (see the interplay between the national and international realms).

## 4 Historical Examples of Key Distinctions in International Legitimacy

As a way of illustrating how these terms and themes and their relations contribute to framing the issues and modalities of legitimacy internationally, I give the example of three types of situations below:

- To begin with, to the extent that national power is projected at the international level and affects actors beyond borders, it needs to be justified and accounted for, so that it can be seen as acceptable, as legitimate. In other words, not anything goes, which implies that human beings outside a country, although not members of “we” or “inside”, are not entirely rightless, presumably because they are human beings.<sup>17</sup> To be sure, the international projection of national power never eliminates the assumption of the primary importance of the national realm (this is also a reality in the context of multilateralism<sup>18</sup>) and, subsequently, the assumption that other countries and people are of lesser or secondary importance. As such, “we” prevails over “them”, “particularist” over “universalist”, and “system” over “society”. The tensions that can exist between national interest and international human rights, with priority given to the former over the latter, are part of this story. This tends to make demands for legitimacy internationally less of a pressure than nationally. But this cannot lead to the conclusion that no constraint of legitimacy is exercised on the projection of power at the international level. There are indeed considerations of legitimacy that tame the projection of power internationally and, in the process, introduce universalist and society aspects, including the sense that actors who are part of “them” are not necessarily totally rightless. The just war approach is a case in point. Despite the fact that just war principles are not as strict and respected as one would ideally want, they are a way in which the “particularist” dimension of the “inside” is limited by what is owed to the “outside” due to the somewhat “universalist” and “society” values at work in just war theory. And these constraints have grown over the years with increasing awareness of the significance of international human rights. Similarly, when it comes to the international projection of political and economic power, not everything is acceptable. The restrictions in these domains may not be as strong and well complied with as one would wish but they exist. The fact that accusations of imperialism and neo-colonialism, for instance, can resonate with people, especially in the developing world, and have political traction indicates that internationally there are values of legitimacy, for example, in this context the one of national sovereignty, that oppose the political and economic violation of the integrity of countries and their people. Here “universalist” and “society” features play a role, somehow bringing a sense of “inside” and “we” in “them” and “outside”, so that a culture of mutual respect, and of rights and legitimacy does not stop at the borders.

<sup>17</sup> This is why recognizing the humanity of actors is likely to be at the core of rightful or legitimate conduct or use of power and the impact it has on people.

<sup>18</sup> In the context of multilateralism, including of the United Nations, member states never cease to be at the service of their national interest.

- Another illustration of how the theme “we/them” and its derivatives “inside/outside”, “universalist/particularist” and “system/society” both make legitimacy important and frame it at the international level is the fact that the presence of legitimacy nationally and internationally or, for that matter, low or even lack of legitimacy nationally and internationally can be connected. Of course, it is tempting to understand the themes of “we/them”, “inside/outside”, “universalist/particularist” and “system/society” and what they mean for legitimacy at the national and international levels as not connected, as mutually exclusive since they are built around and put forward distinctions that reflect and organize the separation of national/international and the competition between. The priority given to the national sphere over the international level also encourages this temptation.

Nevertheless, while expressing differences, the truth of the matter is that these themes, and conjointly the situation of legitimacy nationally and internationally, are to some extent connected and co-constitutive. Hence the idea of continuity that I mentioned before. This is the case because unlike “what happens in Vegas stays in Vegas”, what happens at the national level does not always stay at the national level. How the question of political legitimacy is addressed internationally is not foreign to how legitimacy is tackled at the national level. For example, the state of legitimacy nationally can reverberate, migrate and be exported internationally. This phenomenon is particularly at work in relation with the external projection of powerful nations that, more than regular countries, have the capacity to influence the international landscape (Bukovansky 2002).<sup>19</sup>

From this perspective, the shaping of the international sphere under the impact of the national realm and what this means for legitimacy internationally, especially as connected with the international influence of powerful countries, can take various forms, which are related to the situation of legitimacy nationally. This can vary with the extent to which the national “we” is inclusive or universalist (mindful of the rights of others within and beyond borders), or exclusive or particularist (dismissive of the rights of others within and beyond borders). For instance, the less a powerful nation takes the demands of political legitimacy (inclusive dynamics of rights and duties among members of the community–reciprocity) seriously at the national level, the more its conception and exercise of political power is likely to be self-centered, the less it is likely to be inclined to take seriously the demands of legitimacy internationally and make them part of the international rules of the game. At the international level, it will probably be tempted, as at the national level, to disregard justificatory considerations and an inclusive-rights approach. In this regard, even if this country exercises restraint of power internationally, its motivation will be more a matter of prudence and self-preservation than one of normative commitment to justice and legitimacy. Nazi Germany, which itself, by the way, was anything but restrained and prudent in its projection of power, abroad as at home (we could argue

<sup>19</sup> Mlada Bukovansky, in *Legitimacy and Power Politics: The American and French Revolutions in International Political Culture*, shows how the American and French revolutions had a deep impact on international political culture, including the sense of legitimacy internationally.

that its internal and external radical and unbridled use of force was somewhat self-destructive (Coicaud 2016, pp. 294–295) can serve as an extreme case: its radical form of particularism domestically was echoed by an extreme form of particularism at the international level, in the end making violence domestically and internationally what we could call a compulsive weapon of choice (Chapoutot 2017, pp. 135–136). In contrast, the more political legitimacy is part and parcel of the legal, political and social fabric of a nation at home, the more it makes room for a dynamic of rights and duties among actors in the community, the more it could be open to making this approach a component of its international behavior and of the international system it may contribute to underwrite. This does not imply that, while a factor, the dynamic of rights of duties will be all there is to its foreign policy. This is shown by the foreign policy of democratic countries, in particular the most powerful of them. In spite of their declared support for universal democratic values, national interest is likely to trump the human rights commitment.

Another example of this state of affairs is the case of the Westphalian system. The Westphalian system is indeed a good historical example of how the socialization and problematization of political legitimacy at the national level can be prolonged in the international realm. It was initiated by a series of peace treaties signed between May and October 1648 in the Westphalian cities of Osnabrück and Münster that put an end to the Thirty Years' War (1618–1648). This war had started between Protestant and Catholic states in the fragmented Holy Roman Empire and had gradually developed into a more general conflict involving most of the European great powers. On the basis of these treaties, the Peace of Westphalia is usually seen as constituting a major turning point in the history of international relations, the international system and international law. This is the case although not everybody agrees on all aspects of what originated with the Peace of Westphalia. For example, Ian Clark writes:

“... (T)he Peace of Westphalia has rightly been assigned an important historical status in international relations, but usually for the wrong reasons. Its reputation as the origin of the state system is dubious, to say the least. Nor, for that matter, is the claim that Westphalia deserves recognition because it expounded the principle of sovereignty, or put that principle in practice, any more soundly based. In this regard, Westphalia was a pastiche of old and new conceptions, as exemplified in the different instruments for the territorial dispositions to France and Sweden, respectively. It was also primarily within the context of the constitutional settlement in the Empire—and not as clear expression of a universal doctrine for the European state system—that such a concept of autonomy was mentioned at all.” (Clark 2005, p. 68).

In contrast, Clark considers that the historical significance of Westphalia is found elsewhere:

“The importance of Westphalia is best conceived in terms of the necessary linkage between the formation of an international society and the development of its shared principles of legitimacy: the existence of the society makes possible practices of legitimacy, while the incipient standard of legitimacy, in turn, bears witness to the emerging reality of that society. Having a notion



of legitimacy is what, in shorthand, we mean by an international society. For this reason, any argument that Westphalia is bound up with the articulation of a principle of legitimacy is inescapably also a claim about its importance for the development of an international society... More concisely, Westphalia stands as a historical fulcrum, not because of its endorsement of sovereignty, but because of its more fundamental articulation of a notion of legitimacy as a constitutive act of this new international society. That sovereignty was, indeed, to suffuse the principles of legitimacy in the centuries after Westphalia is not in any doubt. However, we should not confuse principles of legitimacy, as a necessary part of a functioning international society, with its historically variable instantiations—of which sovereignty is one. It is in this respect that the case for Westphalia's importance can most securely be made. Thus far, the debate about Westphalia has become unhelpfully fixated on the specific principle of sovereignty. This has been at the expense of appreciating the prior movement towards a consensual principle of legitimacy at all, and of which sovereignty was to be but one of its many incarnations. At the time of Westphalia, the consensus was around an agreed concept of legality, not sovereignty." (Clark 2005, pp. 61–62).

Ultimately, Ian Clark believes:

“At a fundamental level, what the peace-makers had reached was the realization that goals (such as an effective peace) could no longer be attained unilaterally, or in small groups, but only by a universal consent. Hence, an affirmation that international society would now operate on the basis of consensus (however that was to be made manifest) became the meaningful expression of its acceptance of a principle of legitimacy... The historical novelty of Westphalia... rests on the specific instruments of its peacemaking but also, and more importantly, on the “claims to legitimacy” that these involved... This is the heart of the matter. These can be found in both of the areas that constitute the framework of international legitimacy: an operative practice of consensus and rules of recognition for membership of international society (both of which have been implemented on a variety of changing historical principles over time). Westphalia was to be of major significance in both of these domains. It formulated essential dimensions on international legitimacy that have preoccupied international society ever since.” (Clark 2005, p. 63).

In any case, beyond the quarrels of historians and their disagreements on the various points of importance of the Westphalia treaties, what is clear is that these treaties provide evidence of the emergence of a sense and principles of international legitimacy that were going to serve as foundations and guidelines for years to come, and that this sense of legitimacy and its principles (like sovereignty, consensus, legality, membership) owe much to the values that the countries involved in the Westphalia negotiations had begun to envision, identify with and put in practice in terms of legitimacy, both legal and political, nationally. It is against this background that they came to serve as resources to introduce norms and a culture of legitimacy at the international level, of “we” “universalist” and “society” considerations

internationally. Nevertheless, it has to be stressed that such “we”, “universalist” and “society” dimensions at the international level were selective and exclusive/exclusionary. The international system and the type of international law this led to, brought about a recognition of the rights of states that was by and large limited to the European context and their most powerful countries. It did not apply to all groupings of population and the territories on which they lived, in Europe and the rest of the world. As a result, many of these were more or less left at the mercy of international power politics and, if weak enough, up for grab. It is only with the spread of nationalism in the nineteenth century and with the support of the new principle of self-determination (following the Treaty of Versailles in 1919 (MacMillan 2001, p. xxix)<sup>20</sup>) in the early twentieth century and later on, in the second half of the twentieth century, with decolonization (also benefiting from the principle of self-determination), that the international legitimacy at work in the Westphalian system was made more universal, including by making room for new nations and expressing, in theory, a commitment to protecting their rights.

The development of democratic values and ideas at the national level and their impact internationally is yet another example of how the international sphere can be influenced by the national realm and how this affects legitimacy at the international level. After democratic values and ideas had become benchmarks of political legitimacy in leading Western nations, they were exported internationally and at this level also contributed to political legitimacy. This took place, especially following World War II, through the adoption of international legal instruments dedicated to the celebration and defence of human rights in a variety of areas, in times of war as in times of peace. This allowed individuals to be recognized as international right holders and put pressure on the state, which up to now international law had basically viewed as the primary if not sole international right holder. If this evolution has amounted to a widening and deepening of “we”, universalist” and “society” considerations, it has not been sufficient to fundamentally elevate the international status of the individual and make human rights the decisive component of legitimacy internationally.

These transformations show how the relations between the national and the international levels are not static. They change over time and with them change the problematic of legitimacy, internationally as well as nationally. The same happens with international law and law in general, and even social reality. To maintain their credibility, relevance and appeal, they have to adapt.

- A third illustration of how legitimacy operates internationally in the context of the themes of “we/them”, “inside/outside”, “universalist/particularist” and “system/society” is seen in the feedback that legitimacy at the international level can have on the national level. Incidentally, in the process, in addition to impacting the national realm, this feedback validates further the claims of international legitimacy: by being imported nationally, what passes for international legitimacy becomes all the more of a standard.

<sup>20</sup> On the issue of self-determination in the context of the Treaty of Versailles negotiations, see *Margaret MacMillan, Paris 1919: Six months that Changed the World*.

The most common way this takes place is when international standards of legitimacy, as part of the international system, including of international law and initially the product of a projection of a strong national power, influence less powerful countries. How the international system and its standards of legitimacy constructed by the west (Gong 1984) forced non-western nations to modernize and adopt their views and practices, domestically and in terms of foreign policy, in the new environment, which contributed to strengthening the claims of legitimacy put forward by the westernized international system, is part of this story (Liu 2004; Gluck 1985). In this regard, the extent to which international standards are able to feedback in a country and challenge the national standards of this country tends to also depend on its legitimacy at home and abroad and how this affects its capacity to resist pressure coming from outside. Today the Chinese regime serves as a case in point. Having benefited from globalization by opening up and adapting selectively and strategically to the outside world, it is now in a position to withstand external pressures to adopt modalities of Western liberal democracy internally and even advance its illiberal values internationally.

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