Legitimacy and Legality in International Law: An Interactional Account

Cambridge Studies in International and Comparative Law

Legitimacy in International Law

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Legitimacy & Legality in Intl Law
Legitimacy in International Law Why should sovereign states obey international law? What compels them to owe allegiance to a higher set of rules when each country is its own law of the land? What is the basis of their obligations to each other? Conventional wisdom suggests that countries are too different from one another culturally to follow laws out of mere loyalty to each other or a set of shared moral values. Surely, the prevailing view holds, countries act simply out of self-interest, and they eventually consent to norms of international law to regulate matters of common interest. In this groundbreaking book, Fernando Tesón goes against this prevailing thought by arguing, in the Kantian tradition, that a shared respect for individual human rights underpins not just the obligation countries feel to follow international law but also international laws themselves and even the very legitimacy of nations in the eyes of the international community. Tesón, both a lawyer and a philosopher, proposes that an overlapping respect for human rights has created a moral common ground among the countries of the world; and moreover, that such an outlook is the only one that is rationally defensible. It is this common set of values rather than self-interest that ultimately provides legitimacy to international law. Using the tools of moral philosophy, Tesón analyzes the concepts of sovereignty, intervention, and national interest; the contributions of social contact theory, game theory, and feminist theory; and the puzzles of self-determination and group rights. More than simply outlining his theory, Tesón goes on to give detailed examples of international laws, international institutions, and their human
rights foundations, putting his ideas to work and addressing legal reforms called for by the theory. He suggests that treaties, for example, should be considered binding if, and only if, the consent to the treaty was given by a genuinely representative government, one that acts out of interest for the human rights of its citizens. Although the theoretical achievement of this book is to challenge received wisdom on the foundation of international law, the practical ambition is a call to reform the international legal system for the post–Cold War era, to substitute for the old order one that gives primacy to human dignity and freedom over state power.

The Cambridge Companion to International Law The proposed volume consists of an edited collection within the new Melland Schill Guidebooks on International Law (MSGIL) series. In line with the MSGIL objective of inclusiveness, originality, perspectivism and critical thought, the book is the first of an intended series pertaining to perspectives related to the ways in which the arts influence the perception and attitude of the public towards international law, and the manner this affects the discipline, both in terms of its own development and in terms of its social legitimacy. The book contrasts the narratives of international law depicted in cinema and TV productions with the corresponding narratives advanced by legal scholars. It identifies a cognitive dissonance between them and ascertains its implications on general perceptions of international law.

Authoritarian Rule of Law

Economic Sanctions under International Law This collection presents an analysis of the
imperatives of sovereignty, human rights and national security in the post 9/11 era, and examines their relationship to procedural and substantive legitimacy in liberal democratic states.

The Legitimacy of International Criminal Tribunals This work deals with the question of unlawful territorial situations, i.e. territorial regimes that are established and maintained in defiance of international law. The book represents a welcome contribution to an issue of the outmost importance in international affairs at present times. It brings together elaborate theoretical discussion and thorough empirical research. Students of international law, practitioners, and anyone interested in deepening the understanding of the role and relevance of international law to territorial occupation will greatly benefit from this study.

The Power of Legality This book examines the international law of forcible intervention in civil wars, in particular the role of party-consent in affecting the legality of such intervention. In modern international law, it is a near consensus that no state can use force against another - the main exceptions being self-defence and actions mandated by a UN Security Council resolution. However, one more potential exception exists: forcible intervention undertaken upon the invitation or consent of a government, seeking assistance in confronting armed opposition groups within its territory. Although the latter exception is of increasing importance, the numerous questions it raises have received scant attention in the current body of literature. This volume fills this gap by analyzing the consent-exception in a wide context, and attempting to delineate its limits, including cases in which government consent power is not only negated, but might be transferred to opposition groups. The book also discusses the concept of consensual intervention in
contemporary international law, in juxtaposition to traditional legal doctrines. It traces the
development of law in this context by drawing from historical examples such as the Spanish Civil
War, as well as recent cases such those of the Democratic Republic of the Congo, Somalia, Libya,
and Syria. This book will be of much interest to students of international law, civil wars, the
Responsibility to Protect, war and conflict studies, and IR in general.

Legitimacy and Legality in International Law This innovative book extensively probes and reveals
the existence of legal fictions in international law, developing a theory of their effectiveness and
legitimacy. Reece Lewis argues that, since legal fictions exist in all systems and types of law,
international law is no different and deserves discrete, detailed examination.

A Landscape of Contemporary Theories of International Law It has never been more important to
understand how international law enables and constrains international politics. By drawing
together the legal theory of Lon Fuller and the insights of constructivist international relations
scholars, this book articulates a pragmatic view of how international obligation is created and
maintained. First, legal norms can only arise in the context of social norms based on shared
understandings. Second, internal features of law, or 'criteria of legality', are crucial to law's ability
to promote adherence, to inspire 'fidelity'. Third, legal norms are built, maintained or destroyed
through a continuing practice of legality. Through case studies of the climate change regime, the
anti-torture norm, and the prohibition on the use of force, it is shown that these three elements
produce a distinctive legal legitimacy and a sense of commitment among those to whom law is
addressed.
The Oxford Handbook of International Organizations This volume examines the role of international law in shaping and regulating transitional contexts, including the institutions, policies and procedures that have been developed to steer constitutional regime changes in countries affected by catalytic events. The book offers a new perspective on the phenomenon of conflict-related transitions, whereby societies are re-constitutionalized through a set of interim governance arrangements subject to variable degrees of internationalization. Specifically, this volume interrogates the relevance, contribution and perils of international law for this increasingly widespread phenomenon of inserting an auxiliary phase between two ages of constitutional government. It develops a more nuanced understanding of the various international legal discourses surrounding conflict- and political crisis-related transitional governance by studying the contextual factors that influence the transitional arrangements themselves, with a specific focus on international aspects, including norms, actors and related forms of expertise. In doing so, the book builds an important bridge between comparative constitutional law and international legal scholarship in the practical and highly dynamic terrain of transitional governance. This book will be of much interest to practitioners and students of international law, diplomacy, mediation, security studies and International Relations.

Legitimacy in International Society The objective of this work is to restate the requirements of democratic legitimacy in terms of the deliberative ideal developed by Jürgen Habermas, and apply the understanding to the systems of global governance. The idea of democracy requires that the people decide, through democratic procedures, all policy issues that are politically decidable. But the state is not a voluntary association of free and equal citizens; it is a construct of international
law, and subject to international law norms. Political self-determination takes places within a framework established by domestic and international public law. A compensatory form of democratic legitimacy for inter-state norms can be established through deliberative forms of diplomacy and a requirement of consent to international law norms, but the decline of the Westphalian political settlement means that the two-track model of democratic self-determination is no longer sufficient to explain the legitimacy and authority of law. The emergence of non-state sites for the production of global norms that regulate social, economic and political life within the state requires an evaluation of the concept of (international) law and the (legitimate) authority of non-state actors. Given that states retain a monopoly on the coercive enforcement of law and the primary responsibility for the guarantee of the public and private autonomy of citizens, the legitimacy and authority of the laws that regulate the conditions of social life should be evaluated by each democratic state. The construction of a multiverse of democratic visions of global governance by democratic states will have the practical consequence of democratising the international law order, providing democratic legitimacy for international law.

How to Do Things with International Law There has been intense debate in recent times over the legitimacy or otherwise of international law. This book contains fresh perspectives on these questions, offered at an international and interdisciplinary conference hosted by the Max Planck Institute for Comparative Law and International Law. At issue are questions including, for example, whether international law lacks legitimacy in general and whether international law or a part of it has yielded to the facts of power.
Governmental Illegitimacy in International Law Offers an accessible discussion of conceptual and moral questions on international law and advances the debate on many of these topics.

The Oxford Handbook on the Sources of International Law This book focuses on the problematic relationship between legality and legitimacy when a nation (or nations) intervene in the work of other nations. Bringing together a wide range of contributors with a broad set of cases that consider when such intervention is legitimate even if it isn't legal--and vice versa--the chapters cover humanitarian intervention, nuclear nonproliferation, military intervention, international criminal tribunals, interventions driven by environmental concerns, and the export of democracy. By focusing on a diverse array of cases, this volume establishes a clear framework for judging the legitimacy of such actions.

The Legitimacy of Use of Force in Public and Islamic International Law Carl Schmitt ranks among the most original and controversial political thinkers of the twentieth century. His incisive criticisms of Enlightenment political thought and liberal political practice remain as shocking and significant today as when they first appeared in Weimar Germany. Unavailable in English until now, Legality and Legitimacy was composed in 1932, in the midst of the crisis that would lead to the collapse of the Weimar Republic and only a matter of months before Schmitt’s collaboration with the Nazis. In this important work, Schmitt questions the political viability of liberal constitutionalism, parliamentary government, and the rule of law. Liberal governments, he argues, cannot respond effectively to challenges by radical groups like the Nazis or Communists. Only a presidential regime subject to few, if any, practical limitations can ensure domestic security
in a highly pluralistic society. Legality and Legitimacy is sure to provide a compelling reference point in contemporary debates over the challenges facing constitutional democracies today. In addition to Jeffrey Seitzer’s translation of the 1932 text itself, this volume contains his translation of Schmitt’s 1958 commentary on the work, extensive explanatory notes, and an appendix including selected articles of the Weimar constitution. John P. McCormick’s introduction places Legality and Legitimacy in its historical context, clarifies some of the intricacies of the argument, and ultimately contests Schmitt’s claims regarding the inherent weakness of parliamentarism, constitutionalism, and the rule of law.

Power, Legal Authority and Legitimacy in the Regulation of International Sport With the ad hoc tribunals completing their mandates and the International Criminal Court under significant pressure, today's international criminal jurisdictions are at a critical juncture. Their legitimacy cannot be taken for granted. This multidisciplinary volume investigates key issues pertaining to legitimacy: criminal accountability, normative development, truth-discovery, complementarity, regionalism, and judicial cooperation. The volume sheds new light on previously unexplored areas, including the significance of redacted judgements, prosecutors' opening statements, rehabilitative processes of international convicts, victim expectations, court financing, and NGO activism. The book's original contributions will appeal to researchers, practitioners, advocates, and students of international criminal justice, accountability for war crimes and the rule of law.

Legitimacy in International Law PART V CRITICAL APPROACHES.
Human Rights, Intervention, and the Use of Force Legality today commands substantial currency in world affairs, and this volume examines the struggle over its meaning in diverse practices.

International Law and Transitional Governance This book investigates the legitimacy deficits of two potentially conflicting legal systems, namely Public and Islamic international law. It discusses the challenges that Public international law is being presented within the context of its relationship with Islamic international law. It explores how best to overcome these challenges through a comparative examination of state practices on the use of force. It highlights the legal-political legacies that evolved surrounding the claims of the legitimacy of use of force by armed non-state actors, states, and regional organizations. This book offers a critical analysis of these legacies in line with the Islamic Shari‘a law, United Nations Charter, state practices, and customs. It concludes that the legitimacy question has reached a vantage point where it cannot be answered either by Islamic or Public international law as a mutually exclusive legal system. Instead, Public international law must take a coherent approach within the existing legal framework.

Legal Fictions in International Law

Philosophy and International Law This intellectually rigorous introduction to international law encourages readers to engage with multiple aspects of the topic: as 'law' directing and shaping its subjects; as a technique for governing the world of states and beyond statehood; and as a framework within which several critical and constructivist projects are articulated. The articles situate international law in its historical and ideological context and examine core concepts such as
sovereignty, jurisdiction and the state. Attention is also given to its operation within international institutions and in dispute settlement, and a separate section is devoted to international law's 'projects': protecting human rights, eradicating poverty, the conservation of resources, the regulation of international trade and investment and the establishment of international order. The diverse group of contributors draws from disciplinary orientations ranging from positivism to postmodernism to ensure that this book is informed theoretically and politically, as well as grounded in practice.

Legitimacy and Drones When is a de facto authority not entitled to be considered a 'government' for the purposes of International Law? International reaction to the 1991-4 Haitian crisis is only the most prominent in a series of events that suggest a norm of governmental illegitimacy is emerging to challenge moretraditional notions of state sovereignty. This challenge has dramatic implications for two fundamental legal strictures: that against the use or threat of force against a state's political independence, and that against interference in matters 'essentially' within a state's domestic jurisdiction. Yet although human rights advocates have begun to speak of state sovereignty as an 'anachronism', with some expansively proclaiming the emergence of an international 'right to democratic governance,' international law literature lacks systematic treatment of governmental illegitimacy. This work seeks to specify the international law of collective non-recognition of governments, so as to enable legal evaluation of cases in which competing factions assert governmental authority. It subjects the recognition controversies of the United Nations era to a systematic examination, informed by theoretical and comparative perspectives on governmental legitimacy. The inquiry establishes that the category of 'illegitimate
government' now occupies a place in international law, with significant consequences for the legality of intervention in certain instances. The principle of popular sovereignty, hitherto vague and ambiguous, has acquired sufficient determinacy to serve, in some circumstances, as a basis for denial of legal recognition to putative governments. This development does not imply, however, the emergence in international law of a meaningful norm of 'democratic governance,' nor would such a norm serve the purposes of the scheme of sovereign equality of states embodied in the United Nations Charter.

International Law and Civil Wars Virtually every important question of public policy today involves an international organization. From trade to intellectual property to health policy and beyond, governments interact with international organizations in almost everything they do. Increasingly, individual citizens are directly affected by the work of international organizations. Aimed at academics, students, practitioners, and lawyers, this book gives a comprehensive overview of the world of international organizations today. It emphasizes both the practical aspects of their organization and operation, and the conceptual issues that arise at the junctures between nation-states and international authority, and between law and politics. While the focus is on inter-governmental organizations, the book also encompasses non-governmental organizations and public policy networks. With essays by the leading scholars and practitioners, the book first considers the main international organizations and the kinds of problems they address. This includes chapters on the organizations that relate to trade, humanitarian aid, peace operations, and more, as well as chapters on the history of international organizations. The book then looks at the constituent parts and internal functioning of international organizations. This addresses the
internal management of the organization, and includes chapters on the distribution of decision-making power within the organizations, the structure of their assemblies, the role of Secretaries-General and other heads, budgets and finance, and other elements of complex bureaucracies at the international level. This book is essential reading for scholars, practitioners, and students alike.

Transparency in International Law International Humanitarian Law (IHL) is in a state of some turbulence, as a result of, among other things, non-international armed conflicts, terrorist threats and the rise of new technologies. This incisive book observes that while states appear to be reluctant to act as agents of change, informal methods of law-making are flourishing. Illustrating that not only courts, but various non-state actors, push for legal developments, this timely work offers an insight into the causes of this somewhat ambivalent state of IHL by focusing attention on both the legitimacy of law-making processes and the actors involved. Investigating what law-making processes reveal about the overall state of this legal regime, this thought-provoking book shows that current developments display a far-reaching disagreement about the direction into which IHL should evolve. It explores the most relevant trends in the development of IHL including the absence of formal law-making by states, informal law-making through manual processes and the increasing role of sub and non-state actors. Law-Making and Legitimacy in International Humanitarian Law will be of benefit to scholars and students of international law and relations, as well as practitioners working in the field of IHL, particularly in government ministries, international organizations and NGOs.

Unlawful Territorial Situations in International Law This edited volume examines the role of
international law in a changing global order. Can we, under the current significantly changing conditions, still observe an increasing juridification of international relations based on a universal understanding of values? Or are we, to the contrary, facing a tendency towards an informalization or a reformalization of international law, or even an erosion of international legal norms? Would it be appropriate to revisit classical elements of international law in order to react to structural changes, which may give rise to a more polycentric or non-polar world order? Or are we simply observing a slump in the development towards an international rule of law based on a universal understanding of values? In eleven chapters, distinguished scholars reflect on how to approach these questions from historical, system-oriented and actor-centered perspectives. The contributions engage with the rise of European international law since the 17th century, the decay of the international rule of law, compliance as an indicator for the state of international law, international law and informal law-making in times of populism, the rule of environmental law and complex problems, human rights in Europe in a hostile environment, the influence of the BRICS states on international law, the impact of non-state actors on international law, international law's contribution to global justice, the contestation of value-based norms and the international rule of law in light of legitimacy claims.

Unlawful Territorial Situations There has been intense debate in recent times over the legitimacy or otherwise of international law. This book contains fresh perspectives on these questions, offered at an international and interdisciplinary conference hosted by the Max Planck Institute for Comparative Law and International Law. At issue are questions including, for example, whether international law lacks legitimacy in general and whether international law or a part of it has
yielded to the facts of power.

The Philosophy of International Law Concepts shape how we understand and participate in international legal affairs. They are an important site for order, struggle and change. This comprehensive and authoritative volume introduces a large number of concepts that have shaped, at various points in history, international legal practice and thought; intimates at how the many projects of international law have grappled with, and influenced, the world through certain concepts; and introduces new concepts into the discipline.

The Democratic Legitimacy of International Law In Regulating International Sport: Power, Authority and Legitimacy Lloyd Freeburn provides a ground-breaking account of the legal basis of regulatory power in international sport and outlines the reforms necessary to give the regime legality and legitimacy.

Legality and Legitimacy in Global Affairs While its importance in domestic law has long been acknowledged, transparency has until now remained largely unexplored in international law. This study of transparency issues in key areas such as international economic law, environmental law, human rights law and humanitarian law brings together new and important insights on this pressing issue. Contributors explore the framing and content of transparency in their respective fields with regard to proceedings, institutions, law-making processes and legal culture, and a selection of cross-cutting essays completes the study by examining transparency in international law-making and adjudication.
Hans Kelsen's Pure Theory of Law An interdisciplinary volume exploring the concept of legitimacy in relation to international courts and what can drive and weaken it.

Concepts for International Law The word 'legitimacy' is seldom far from the lips of practitioners of international affairs. The legitimacy of recent events - such as the wars in Kosovo and Iraq, the post-September 11 war on terror, and instances of humanitarian intervention - have been endlessly debated by publics around the globe. And yet the academic discipline of IR has largely neglected this concept. This book encourages us to take legitimacy seriously, both as a facet of international behaviour with practical consequences, and as a theoretical concept necessary for understanding that behaviour. It offers a comprehensive historical and theoretical account of international legitimacy. It argues that the development of principles of legitimacy lie at the heart of what is meant by an international society, and in so doing fills a notable void in English school accounts of the subject.

Part I provides a historical survey of the evolution of the practice of legitimacy from the 'age of discovery' at the end of the 15th century. It explores how issues of legitimacy were interwoven with the great peace settlements of modern history - in 1648, 1713, 1815, 1919, and 1945. It offers a revisionist reading of the significance of Westphalia - not as the origin of a modern doctrine of sovereignty - but as a seminal stage in the development of an international society based on shared principles of legitimacy. All of the historical chapters demonstrate how the twin dimensions of legitimacy - principles of rightful membership and of rightful conduct - have been thought about and developed in differing contexts.

Part II then provides a trenchant analysis of legitimacy in contemporary international society. Deploying a number of short case studies, drawn mainly from the wars against Iraq in 1991 and 2003, and the
Kosovo war of 1999, it sets out a theoretical account of the relationship between legitimacy, on the one hand, and consensus, norms, and equilibrium, on the other. This is the most sustained attempt to make sense of legitimacy in an IR context. Its conclusion, in the end, is that legitimacy matters, but in a complex way. Legitimacy is not to be discovered simply by straightforward application of other norms, such as legality and morality. Instead, legitimacy is an inherently political condition. What determines its attainability or not is as much the general political condition of international society at any one moment, as the conformity of its specific actions to set normative principles.

Legitimacy and International Courts

Legality and Legitimacy Since the Second World War, States have increasingly relied upon economic sanctions programs, in lieu of military action, to exert pressure and generally to fill the awkward gap between verbal denunciation and action. Whether or not sanctions are effective remains a point of contention among policymakers. Frequently asked questions include whether any legal order constrains the use of sanctions, and, if so, what the limits on the use of sanctions are. This volume gathers contributions from leading experts in various relevant fields providing a seminal study on the limits of economic sanctions under international law, including accountability mechanisms when sanctioning States go too far. Where there are gaps in the law, the authors provide novel and important contributions as to how existing legal structures can be used to ensure that economic sanctions remain within an accepted legal order. This book is a most valuable contribution to the literature in the fields of international economic law, public international law and international dispute resolution. Ali Z. Marossi is an advisory board
A Philosophy Of International Law

The question of the sources of international law inevitably raises some well-known scholarly controversies: where do the rules of international law come from? And more precisely: through which processes are they made, how are they ascertained, and where does the international legal order begin and end? These traditional questions bear on at least two different levels of understanding. First, how are international norms validated as rules of international "law", i.e. legally binding norms? This is the static question of the pedigree of international legal rules and the boundaries of the international legal order. Second, what are the processes through which these rules are made? This is the dynamic question of the making of these rules and of the exercise of public authority in international law. The Oxford Handbook on the Sources of International Law is the very first comprehensive work of its kind devoted to the question of the sources of international law. It provides an accessible and systematic overview of the key issues and debates around the sources of international law. It also offers an authoritative theoretical guide for anyone studying or working within but also outside international law wishing to understand one of its most foundational questions. This handbook features original essays by leading international law scholars and theorists from a range of traditions, nationalities and perspectives, reflecting the richness and diversity of scholarship in this area.

Taking the (international) Rule of Law Seriously

This text contains 29 cutting-edge essays by philosophers and lawyers which address the central philosophical questions about international
law. Its overarching theme is the moral and political values that should guide and shape the assessment and development of international law and institutions.

Cinematic perspectives on international law Scholars have generally assumed that authoritarianism and rule of law are mutually incompatible. Convinced that free markets and rule of law must tip authoritarian societies in a liberal direction, nearly all studies of law and contemporary politics have neglected that improbable coupling: authoritarian rule of law. Through a focus on Singapore, this book presents an analysis of authoritarian legalism. It shows how prosperity, public discourse, and a rigorous observance of legal procedure have enabled a reconfigured rule of law such that liberal form encases illiberal content. Institutions and process at the bedrock of rule of law and liberal democracy become tools to constrain dissent while augmenting discretionary political power - even as the national and international legitimacy of the state is secured. This book offers a valuable and original contribution to understanding the complexities of law, language and legitimacy in our time.

Law-Making and Legitimacy in International Humanitarian Law By showing how Kelsen's theory of law works alongside his political philosophy, the book shows the Pure Theory to be part of a wider attempt to understand how political power can be legitimately exercised in pluralist societies.

Legitimacy & Legality in Intl Law Unmanned combat air vehicles, or in common parlance 'drones', have become a prominent instrument in US efforts to counter an objective (and
subjective) cross-border terrorist threat with lethal force. As a result, critical questions abound on the legitimacy of their use. In a series of multidisciplinary essays by scholars with an extensive knowledge of international norms, this book explores the question of legitimacy through the conceptual lenses of legality, morality and efficacy, it then closes with the consideration of a policy proposal aimed at incorporating all three indispensable elements. The importance of this inquiry cannot be overstated. Non-state actors fully understand that attacking the much more powerful state requires moving the conflict away from the traditional battlefield where they are at an enormous disadvantage. Those engaging in terrorism seek to goad the ruling government into an overreaction, or abuse of power, to trigger a destabilization via an erosion of its legitimacy. Thus defending the target of legitimacy”in this case, insuring the use of deadly force is constrained by valid limiting principles”represents an essential strategic interest. This book seeks to come to grips with the new reality of drone warfare by exploring if it can be used to preserve, rather than eat away at, legitimacy. After an extensive analysis of the three key parameters in twelve chapters, the practical proposition of establishing a 'Drone Court' is put forward and examined as a way of pursuing the goal of integrating these essential components to defend the citizenry and the legitimacy of the government at the same time.

Democratic Governance and International Law It has never been more important to understand how international law enables and constrains international politics. By drawing together the legal theory of Lon Fuller and the insights of constructivist international relations scholars, this book articulates a pragmatic view of how international obligation is created and maintained. First, legal norms can only arise in the context of social norms based on shared understandings. Second,
internal features of law, or 'criteria of legality', are crucial to law's ability to promote adherence, to inspire 'fidelity'. Third, legal norms are built, maintained or destroyed through a continuing practice of legality. Through case studies of the climate change regime, the anti-torture norm, and the prohibition on the use of force, it is shown that these three elements produce a distinctive legal legitimacy and a sense of commitment among those to whom law is addressed.

The International Rule of Law The book explores the main characteristics of contemporary theory in international law. It examines in an analytical fashion 32 schools, movements, and trends as well as the works of more than 500 authors on substantive issues of international law.

Legality and Legitimacy in International Order "The description for this book, How to Do Things with International Law, will be forthcoming. "--

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