Chapter 2

RIOs, Legitimacy and Democracy. A Conceptual Clarification

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Conceptual Confusion

As many have observed before, the past decades have been marked by an increase in regional cooperation of states, in all parts of the world. Parallel to this has been the growing attention of scholars to this phenomenon – the latter probably developing even faster than the regional cooperation itself. This scholarly interest has not only been of an empirical nature, describing and explaining the phenomenon of regionalism. Normative issues have also been broadly discussed, and in many studies regional integration organizations have been marked as a source of legitimacy deficit.

A legitimacy deficit?

The development of these organizations should be understood, so the argument goes, in terms of a shift in governance that has led to problems of accountability and control and a lack of civic participation. New decision-making centres have been established at an international level, but these centres lack (to a large extent) powerful parliaments, legal systems with independent courts accessible to citizens, an adequate system of popular representation, etc. (Van Kersbergen 2001). Furthermore, the basic characteristics of a legitimate political system, such as shared understandings among all the people involved, a *demos* and a shared public sphere, are lacking (Lehning 1998). Others, however, argue that growing regionalism actually strengthens legitimacy because it helps overcome deadlocks in international decision making and remove inefficient competition between states to deal with cross-national issues. The establishment of regional integration organizations makes more effective cooperation possible (Scharpf 1999).

These two camps in the normative debate disagree on the way the present situation is to be assessed and, consequently, they also differ on the best path for future development. From a ‘true believer’s’ point of view, what is needed is still more regional integration – eventually leading to a global government. This would bring maximum effectiveness and efficiency to decision making and problem solving. Regionalism is seen as an exemplary step towards a better global order. For the sceptics, this is obviously is a worst case scenario, resulting in multiple deficits in legitimacy. On a global scale, it would be even more problematic to realize an accountable and representative system, because a *demos* would be completely absent and genuine party-building would be impossible.

This, of course, is an overly schematic sketch of the existing normative debate on the consequences of regionalism. It leads us, nonetheless, to a number of important observations. For one, it demonstrates that regional integration functions as a central case in a broader dispute on the legitimate world order. If issues of legitimacy are interesting in this time of globalization, they certainly deserve to be investigated in relation to the development of Regional Integration Organizations (RIOs). They represent, for ‘believers’ and sceptics alike, something of a test case. The above sketch shows, furthermore, that apparently different normative issues in this field are formulated in terms of legitimacy, making one wonder: is this disagreement not (also) one about the meaning of the concept of legitimacy itself? Do both sides in the debate share the same understanding of legitimacy? ‘Legitimacy’ is a widely cited concept in the debate, but is it clear what is meant by it? A few observations from the literature on legitimacy and the European Union show this is not clear.

Understandings of legitimacy

First of all, we can see that in different studies, ‘legitimacy’ is understood in different ways. Quite often legitimacy is used as a synonym for democracy, and the use of the term in this sense often turns up in studies on ‘the democratic deficit’ (Follesdal 1998; Weale 1998). In other studies, legitimacy is understood as some kind of combination of democracy and legality (Beetham and Lord 1998). In most studies, however, the exact meaning of legitimacy is left implicit; research on the power and influence of the parliament or the decision-making structure within the EU is simply presented as relevant to the concept of ‘legitimacy’.

Secondly, we witness that not only the specific content of ‘legitimacy’ differs between studies, but also the object of legitimacy. This leaves us with the question of whether legitimacy in the field of regional cooperation is a characteristic of decisions, of decision-making systems, of power holders, or possibly of organizations? This vagueness as to the object of legitimacy was already present in Max Weber’s classical text on the subject. In *Politics as a Vocation*, legitimacy first seems to be characteristic of the rule or the commands of power holders, but then the term also refers to government as such (Weber 1919, ch 1).

A last factor that brings further confusion to the debate on the legitimacy of RIOs is the logical status of the concept of legitimacy. Weber introduced the concept as a sociological one. According to this understanding of the term, legitimacy refers to the likelihood of governmental decisions being obeyed by citizens – not out of hope or fear, but because of some ‘internal motivation’. Weber presented three categories of possible ‘internal motivations’; that is three ideal typical types of authority (Weber 1919, ch 1). In his *Political Writings*, however, Weber used these sociological concepts as normative ones (Weber 1988). In these texts, legitimacy referred to the conditions that must be fulfilled for decisions (or governance as such) to be binding or valid.

Distinguishing between these two conceptual categories is important for several reasons. First of all, these different concepts imply different kinds of questions and different kinds of answers. In a sociological study we ask: do people accept political decisions (or a regime, etc.) as binding for them? In a normative study we ask: when

should decisions (or a regime, etc.) be accepted as binding? Furthermore, they differ in their approach to the question ‘legitimate for whom’? In a sociological study, it is of relevance to define the group of people which should be asked whether they accept this decision (or regime, etc.). In a normative study we apply a rational argument that should be equally convincing to everyone. In some contemporary studies, these two categorically different understandings of legitimacy seem to become mixed up. Beetham and Lord, for instance, take legitimacy (in a normative sense) to mean ‘normative justifiability’ *plus* ‘express consent of the appropriate subordinates’ (Beetham and Lord 1998). This approach at least suggests that the latter is not an aspect of its normative justifiability but merely an empirical matter.

Our aim in this chapter is to develop a clear articulation of legitimacy in the normative sense. In this articulation, we focus on Regional Integration Organizations (RIOs) as they are key to the current global shifts in governance. Our articulation will help us to engage systematically in the study of RIOs and since ‘legitimacy’ and ‘democracy’ have a central role in this book, we will return to their relationship to one another once the concept of legitimacy has been clarified. In the following section, we point out how our understanding of the concept of legitimacy is related to the context in which it developed: that of states. In section 3 we shift our perspective to legitimacy in regional multi-level systems. In section 4 we shall add the global system to the picture. In the final section we will use our interpretation of the legitimacy of RIOs to investigate the issue of ‘RIOs and democracy’.

Legitimacy and State

In the introduction to this chapter, we have outlined the debate between the two positions on the legitimacy of RIOs. On the one hand, there are alarmists who point out legitimacy deficits: RIOs lack proper parliaments and judicial review, for instance. By others, meanwhile, regional cooperation is judged positively because it means solving coordination problems. Two different arguments, two different conclusions – and probably two different conceptions of legitimacy, as well. At the outset it is not clear whether either position is significantly stronger than the other.

What we can point out is that beyond the apparent disagreement, the two arguments also have something in common: both take the state as the basis for judgement. The sceptics point out the legitimacy deficits of RIOs, thereby taking the state as the baseline by which legitimacy is to be judged. To ‘believers’, the advantages of new regional (or international) organizations or decision-making systems are spelled out in terms of their likeness to the coordination systems within existing (federal) states. One party focuses on the differences between RIOs and states, the other on the similarities – both take the state as their point of reference.

States and RIOs

Of course, the state-parallel that is often construed in dealing with RIOs’ legitimacy must not strike us as odd. We are familiar with the concept of legitimacy as referring to states. Until quite recently, any book about ‘legitimacy’ would have had to refer

to the 'state'. The concept developed while the state as we know it was finding its shape. Ideas like individual liberties, an independent judiciary, *volonté de tous*, representation, and so on, were developed and found their realization in the political entities that we have learned to call states.

Furthermore, RIOs are often pictured and characterized in ways – and indeed present themselves in ways – that remind us of states. Maps are drawn of the territory of the RIO and this territory encompasses a clear, regionally concentrated part of the globe, not just some set of areas that cartographers accidentally gave the same colour. We read that people living in this region have historical ties that go beyond ethnic or linguistic difference: a common history of oppression under colonialism or shared cultural roots. The political authority within the region tends to broaden its scope beyond the narrow functional tasks that global international organizations have. From economic cooperation, many regional integration organizations move on to incorporate other functions that have classically been the domain of states.

However tempting the step from 'legitimacy and state' to 'legitimacy and RIO' might be, our question must remain: are RIOs to be judged in the same way as states are, in order to be called legitimate? To that question, various answers have been given in recent years. One answer is affirmative. Regional cooperation and the establishment of RIOs imply shifts in decision-making power from states to other forums. In order to be legitimate, arrangements for control, accountability and the like should follow the shifts in decision making. RIOs should develop exactly the same institutions states have. States, however, have not dissolved. Even the greatest pessimists hold that states still have some autonomy (De Vries 2001). What we witness in institutionalized regional cooperation, therefore, is not a simple shift in governmental power, but a change into something new. Many argue that the EU should not be seen as a (deficient) state, but as a *sui generis*, that must be judged by its own criteria (Bader 1999; Curtin 1997).

Functional equivalence

How should the legitimacy of RIOs, if they are not to be understood as (deficient) states, be judged? Of course, if it still is 'legitimacy' we are interested in, our perspective cannot be radically different from the one we employ when judge states. Basically it must deal with the issue: what characteristics must it have for its decisions to be binding and its actions accepted by its citizens?

An answer that has been developed in recent years is the notion of 'functional equivalence'. A first interpretation of this idea takes functional equivalence to mean that an RIO does not need exactly the same institutions as states have to be legitimate; there should, however, be equivalent institutions for each national institution. There need not be parliaments, as exist in states, but there has to be some body that represents the citizens' interests. Such an understanding of functional equivalence, however, is vulnerable to the same critique as the idea that RIOs should become identical to states. It still does not fully take into account the specific co-existence of RIOs and states. We have to look for an interpretation of 'functional equivalence' that is less naïve. A more sophisticated interpretation should not take existing institutions or arrangements within states at a starting point and then look for

equivalents within RIOs. The alternative approach is to identify those functions that must be fulfilled within any political system in order for it to be called legitimate. This more sophisticated version of functional equivalence will enable us to distinguish between arrangements or institutional designs that contribute to the legitimacy of the decision-making system, and those that are dysfunctional. Consequently, this approach to functional equivalence will not give us a demarcation criterion with which to distinguish between legitimate systems and those which lack legitimacy. It will, however, help us to point out what measures and arrangements contribute to the legitimacy of the system, and which do not.

Legitimacy in Regional Multilevel Governance

Scharpf's functional approach

On one RIO in particular, the literature on legitimacy is enormous: the EU. Only in a small minority of these publications, however, is the concept of legitimacy systematically addressed. Sometimes a list of desirable institutions is presented. Often it is one institution or practice within the EU that is investigated. For our purposes, a list of 'necessary items' is much too arbitrary as a starting point. As argued in the previous section, for a meaningful articulation of the legitimacy of RIOs a functional approach is called for. One promising approach is that of Fritz Scharpf. His distinction between *input* and *output* legitimizing functions might be an appropriate starting point. Scharpf describes his perspective on legitimacy as functional.

In this view, legitimating arguments invoking shared legitimacy beliefs imply *a socially sanctioned obligation to comply with government policies even if these violate the actor's own interests or normative preferences, and even if official sanctions could be avoided at low cost* (Scharpf 2003, 3 italics in orig).

In that definition he clearly follows Weber, and in doing so he seems to take a sociological focus. In the text immediately following these lines, he refers to the effects of responsiveness (input legitimacy) and of providing effective solutions (output legitimacy) to promote greater trust in modern institutional arrangements on the part of citizens. Yet, Scharpf reassures us that he attempts a conceptual normative articulation. Input and output legitimacy both rest, Scharpf maintains, on the premise that legitimate government must serve the common good of the respective constituency, and that this function must be protected both against the self-interest of governors and the rent-seeking strategies of special interest. 'Input legitimacy' basically means government *by* the people, and 'output legitimacy' government *for* the people.

Input legitimacy is oriented at collective decision making and realizing the public will. Scharpf develops this aspect of legitimacy by referring to Rousseau's work on the formation of the general will, but also to the work of Habermas and others on communicative rationality and public deliberation. *Output* legitimacy, on the other hand, involves effective governmental steering in the public interest.

Scharpf here draws on the ideals of balancing power as they have been formulated in the *Federalist Papers*, and earlier by De Montesquieu and even Aristotle. Output legitimacy, according to Scharpf, is not only about blocking the power of special interest and preventing wrongdoing. It also is about 'institutional arrangements facilitating the vigorous pursuit of the common interest and effective problem-solving' (Scharpf 1999, ch 1; Scharpf 2003, 3–5). These two kinds of legitimacy are complementary in serving the common good; the one cannot be reduced to the other. Institutional arrangements vary widely among constitutional democracies, Scharpf observes, but they ideally serve either or both of these functions. In fact, most forms can be said to serve both functions.

Over the years Scharpf has presented and elaborated this distinction in many publications. Basically, however, the argument has remained the same. He criticises time and again those that maintain that the EU suffers from some kind of crisis of legitimacy, the solution to which lies in further democratization. While he agrees that in certain respects the legitimacy of the EU might be threatened, in his analysis, the problem is not to be found on the input side, but on the output side. It is problem-solving gaps and coordination problems that make for the EU legitimacy deficit – not lack of popular participation, and better performance in one dimension cannot substitute for the deficits in another. Scharpf agrees with those critics that argue that state-like participatory democratic policy making at the EU level is improper because one of the necessary preconditions for this is not fulfilled: a collective, a people with a common identity is non-existent (Scharpf 1996; Scharpf 1999; Scharpf 2003).

Scharpf re-examined

Scharpf's distinction between two kinds of legitimacy, of course, rings familiar. It echoes dichotomies such as 'democracy versus effectiveness' or 'participation versus steering'. Scharpf has articulated a familiar distinction into an elegant and more elaborate position. When observed more closely, however, his distinction is not as clear and convincing as it at first seems. Three observations can substantiate this claim.

First, a central concept in his understanding of input legitimacy is the *public* or *general will*. Through participation in public deliberation and decision making, in whatever form, the general will is expressed. In output legitimacy the central concept is the *public interest*. That is the point of orientation for effective problem solving. A first question that must be raised is: what exactly is meant by the public interest and how does it differ from the general will? Scharpf's argument does not allow that the public interest can in some way be deduced from the general will; that would mean that output legitimacy could be reduced to input legitimacy. Scharpf cannot refer to aims or values that have, in effect, been chosen in the decision-making process to stuff out public interest (see: SangiovanniVincentelli 2002). His work however, hardly gives us a clue as to how public interest is to be understood. Only one passing example is given: results should accord with 'plausible norms of distributive justice' (Scharpf 1999, 13). Any further justification for this example is lacking, however. Our point is not that problem solving in the public interest is

irrelevant for legitimacy. We simply observe that Scharpf offers us a very limited articulation of what is in the public interest.

Second, the category of output legitimacy, as Scharpf presents it, encompasses two quite different aspects. On the one hand, it is about avoiding and remedying decision-making traps and thus about effective problem solving. On the other hand, it is about the prevention of wrongdoing and checks on power holders. We may grant the point that both aspects are about 'governing in the public interest'. But are they not two quite distinct functions? Scharpf himself observes that there is 'an obvious and problematic tension' between institutional arrangements designed to fulfil either of these tasks (Scharpf 2003, 5). The logical conclusion would be to accept that there are in fact two different functions at stake here.

Third, on the input side the central idea is the development or expression of the general will. In recent discussions on deliberative democracy, it has become clear that in fact two ideals are involved in the advocacy for participation in government. One ideal is that of (practical) rationality: deliberation means having a discussion, in which the better ideas prevail. The other ideal takes a more political perspective, it is concerned with equal opportunity and checks on the most powerful, to prevent them dominating the weaker (Bohman 1997; King 2003; Macedo 1999). This distinction between ideals in deliberation can be understood as two functions that might be fulfilled by deliberative and participatory arrangements. The participation of citizens in policymaking can lead to better, that is more rational decisions, and their participation may be an effective way to guard their individual interests. In his classical work on representative government, J.S. Mill makes an effort to bring both aspects into a parliamentary system: civic participation is better than despotic rule because one man cannot see what many can *and* because each man is himself the best guardian of his own interests (Mill 1991/1861, 238–9); an electoral system should at the same time guarantee that the most competent men become member *and* make for an equal representation of different interest groups so as to prevent the tyranny of a specific group (Mill 1991/1861, ch. VI and VII); parliament is to be understood as a 'congress of opinions' playing a role in finding good policies *and* as a 'committee of grievances' critically controlling government (Mill 1991/1861, 282). The example of Mill's work and the discussions on deliberative democracy lead us to the conclusion that Scharpf's input-category in fact contains two functions.

Scharpf's matrix rearranged

Scharpf's approach to legitimacy, presenting different aspects of the common good, is appealing. The distinction he makes, however, is not completely convincing. Our comments suggest another categorization to judge whether specific arrangements are functional to legitimacy:

- do they contribute to rational decision making (input legitimacy)?
- do they contribute to preventing the abuse of power (control legitimacy)?
- do they contribute to the realization of outcomes in the public interest (output legitimacy)?

Each of these builds on a long tradition.

Input Bringing practical rationality into political decision making is an ideal that can be traced back to Aristotle and Plato. The latter maintained in *The Politeia* that the wise should be kings as they have privileged access to the relevant knowledge. At least since the Reformation the idea has developed that, in principle, all people can and should participate in rational debate and contribute to the formation of opinion. Since early modern times this idea has done its work and led to civic participation and public debate as we know it (Habermas 1962). Practical rationality has increasingly come to be understood as something for which communication and even debate was necessary. Since the beginning of the 20th century, as the social sciences have developed, this tradition has in a sense witnessed a revival of Platonic ideas as special expertise (based, this time, on scientific enquiry) was advocated for rational decision making. A recent renewal of the tradition has emphasized the importance of including the experiences of ordinary people, especially those that are ‘socially excluded’. Many recently introduced new participatory arrangements for governance have been advocated for their potential contribution to rational decision making: citizen polls and citizen policy juries at the local level or forums of accredited NGOs and epistemic communities at the international level.

Within this functional field of legitimacy we typically find debates on the best mix of broad civic participation and the inclusion of experts and on the optimum balance between unlimited access (leading to problems of coordination) and regulated entry (hindering open debate).

Control The tradition of control has its roots in Aristotle’s analysis of mixed constitutions, in which different societal groups hold each other in check through the calculated distribution of offices (*The Politics*). The rationale here is political: it is about ‘power blocked by counter power’, in the classical phrase of De Montesquieu (Montesquieu 1748/1979, L. XI ch. iv). The other topical formulation is that of ‘checks and balances’, as elaborated in the *Federalist Papers*. This political rationality is also invoked in arguments for democratic rights. As Mill pointed out, each individual’s interest is served best when everyone has a say. Having a voice in decision making, albeit via one’s representative, is an effective barrier against special interest and tyranny (Mill 1991/1861, Ch 3). These ideals typically found their way into modern law: constitutions in which the relations between counterbalancing offices are fixed, and which also present individual freedoms that can be invoked to block the exercise of power.

Within this functional field of legitimacy, one of the *topoi* is that on horizontal versus vertical control. Adherents to the latter, in debates on establishing control, opt for arrangements in which power holders are held accountable by some forum. Those who favour horizontal control put their trust in arrangements of competition, peer review and countervailing powers.

Output Within political theory, a distinction is often made between procedural and substantial theories of justice. Procedural political theories tell us how decisions should come about. They, broadly speaking, cover the field of input and control. The output tradition is closer to the theories that put forward a substantial interpretation of justice. They tell us what we should try to realize, what is worthwhile to defend

and foster. It is a tradition that deals with aims or values that are the yardstick for success. They involve ideals like individual security and development, the equitable distribution of goods, economy in the use of collective resources or environmental sustainability. Which actors are involved in what capacity and at which moment is not of relevance from this perspective.

Of course, failure to realize a specific output-value can have many causes. Scharpf had his reasons to focus on a particular cause of failure: coordination problems. The causes of failures to realize the output-aims that contribute to a system's legitimacy might be elaborated in Scharpf's version of the rational choice analysis of coordination problems, or in any other. That, however, is of no consequence for the output criterion. For output-legitimacy, decision making might simply be viewed as a black box. What is relevant is the quality of the decisions coming out of it. Within this functional field, debates are typically about the priority of specific values or aims: for instance, relief of poverty now versus general economic development over the long term; economy versus environment.

Summing up, we propose, following Scharpf, to assess the legitimacy of an organization or a system of decision making according to the extent to which it contributes to the realization of the common good. Realizing the common good is to be measured on three complementary aspects. Regarding specific aspects or arrangements within that system we have to ask, firstly, whether they contribute to rational decision making. The second question needs to be whether they contribute to a system of countervailing power or effective accountability. The third question is whether they contribute to the realization of outcomes that accord with substantial universal principles. In a later section we will flesh out these basic requirements of legitimacy, especially in relation to 'democracy'. Before doing that, however, we want to add a global dimension to our picture, in order to make our analysis complete.

Legitimacy in a Global Pluralistic System

In our introduction we came across two opposing positions. One of them held that RIOs are not and cannot be called legitimate, simply because they are not and cannot be like states. In the last two sections we have developed an interpretation of legitimacy that would allow for RIOs to be part of a legitimate system. That leaves us with the other position in the debate. Adherents to the second position argue that the cooperation of states in regional integration organizations helps solve all kinds of coordination problems. The gist of the argument is that we should aim for institutionalized global cooperation. The issue that has to be addressed now, is whether regional co-operation should only be a phase in the development towards global government? Is there a lasting role for RIOs in a just world, and if so, under what conditions? There is a further reason to turn to the global level. In investigating the concept of legitimacy hitherto, we have focused on arrangements and developments within RIOs and specific regions. Scharpf's claim, as cited above, is that input and output legitimacy rest on the premise that legitimate government

must serve the common good *of the respective constituency*. Can there be any justification for narrowing down the domain of legitimacy in such a manner?

World government

The ideal of a world government and global democracy has, in recent years, again found its supporters. As many problems and disasters in our world can be said to be a direct or indirect consequence of the existence of many states all following their own interests, the argument for ending the international anarchy of states certainly has its appeal. Would not the fight against insecurity and the continuous threat of war, inequality and suppression be better conducted by one world government? There would be no more safe havens for terrorists; the consequences of the uneven distribution of natural resources could be compensated by an effective tax system; equal rights for all could be guaranteed; pollution problems could be tackled without the endless disputes between states, and so on (Archibugi 1998; Held 2002).

The ideal of a world government, however, has been criticized since its very inception. A classical comment is that of Kant. He pointed out an important difference between arguments for the establishment of states, and arguments that can be given for a world state in a situation in which particular states already exist. It can be argued that individuals in a state of nature rightfully choose to partake in a state because it means moving from lawlessness to a lawful order. Individuals have nothing to lose in giving up their 'lawless freedom'. States, however, 'already have a lawful internal constitution, and have thus outgrown the coercive right of others to subject them to a wider legal constitution in accordance with their conception of right' (Kant 1795, 104). Fusing states into a world state could easily mean despotism, because it would mean disregarding the differences between the nations in the world. A similar argument has more recently been made by Rawls. Peoples in the world should be able to organise and govern themselves – up to a certain level – and that means accepting a plurality of states in the world (Rawls 1999).

On the one hand, the notion of a world state is appealing because it promises an effective approach towards solving international problems and realizing a more peaceful and just world. On the other hand, it might mean despotism because it implies overriding the differences that exist between – and are valued by – peoples. Is a feasible middle course conceivable?

A middle course

One route that has often been chosen, is that of the development of some kind of federal world state (Habermas 1992; Pogge 1992; Pogge 1998). It remains unclear, however, how exactly decision-making power would be distributed. In practice, it probably comes down to either a global state, or a plurality of independent states (Mertens 1996; Tholen 1997). It seems reasonable to look for a middle course that could in some sense incorporate the continued existence of states.

To imagine such a middle course, we might start with Kant's ideal of a federation of free states, a league of nations, to guarantee eternal peace. The league would be established by a treaty and it is in International Law that Kant invested his trust.

In recent times we have witnessed that the existence of International Law alone often is not enough to prevent disasters like war between states or ethnic cleansing. Others have put their hope in International Organizations, like the UN or the World Bank. International Law is already complemented by real organizations, but this still seems inadequate – international organizations have often proved weak and ineffective (Tesón 1995). We could move further, however. Some have pointed out that we must also take into account all kinds of transnational networks of citizens, of experts, of corporations, and also of executive officials (Haas 1992; Keane 2003; Keck and Sikkink 1998; Slaughter 2004). These international transnational networks must also be understood as part of the international middle ground. A last addition to this cumulative picture of a feasible middle position between a world state and an anarchy of states is that of RIOs. Walzer, for example, stresses the importance of regional integration organizations like the EU in his argument for a ‘third degree global pluralism’. ‘[I]t offers’, so he maintains, ‘the largest number of opportunities for political action on behalf of peace, justice, cultural difference, and individual rights; and it poses, at the same time, the smallest risk of global tyranny’ (Walzer 2000, 8).

The proper conclusion seems to be that we can value the cooperation of states within RIOs as positive, without necessarily accepting the premise that the ultimate goal is a world government. In a world that includes Regional Integration Organizations, in addition to states and International Organizations, an optimum of both universal and particularistic values might be realized, as Walzer puts it. This implies a high level of checks and balances and in this multi-centred regime the number of agents that can be involved in deliberation is maximized. Here the aspects of input and control legitimacy return. It is noteworthy, however, that ‘the respective constituency’ must now include every individual in the world, and also that RIOs are understood to be part of a world system that is regulated by international law: they are supposed to obey international principles and regulations and they are themselves the result of international treaties and recognized by other international organizations.

To judge his multi-level world system Walzer, as a matter of fact, also uses specific ideals of output legitimacy like justice, cultural difference, and so on, that refer to desirable states of affairs in the world at large, but also in each specific state. For distributive justice we logically take a global perspective, as it involves comparing the conditions of people everywhere in the world. For a value as individual liberty, we should concentrate on the way individuals are treated by particular states. We can take this as an articulation of output legitimacy of RIOs. It makes us ask, for example, whether an RIO contributes to democratization, the rule of law and respect for individual liberties within member states.

RIOs, Legitimacy and Democracy

Now that we have clarified the concept of legitimacy, including its relationship to world order, we are ready to bring the concept of democracy into the picture. One of the confusions we pointed out earlier lies in the use of the terms ‘democracy’ and ‘legitimacy’. While sometimes these terms are used synonymously, at other times

they are understood quite differently, and one also reads of ‘democratic legitimacy’. Here, we suggest that the ideal of democracy is indeed part of what makes a system legitimate. Different aspects can be distinguished within the concept of ‘democracy’, however, and these aspects can be categorized following our three legitimacy-functions.

Input: democracy as participation of non-state actors in RIOs

The central issue in input-legitimacy is the participation of non-state actors in decision making at RIO level, in order to develop rational – that is well-informed – policies. In the existing literature on this topic the category of non-state actors is often labelled as ‘civil society’. Many kinds of actors and many sorts of participatory arrangements are presented. Often a distinction is made between parliamentary and non-parliamentary arrangements. With the former, the case of reference is that of national parliaments, composed of individual delegates chosen through direct or indirect general elections (see Part Three of this volume). In the latter case, the model is that of corporatism: civic participation is realized through the (formal) involvement of (representatives of) societal groups (see Part Four of this volume).

If we follow this distinction, we can point out two groups of criteria for the evaluation of existing arrangements within RIOs. For a parliamentary type structure to contribute to input-legitimacy, this has to be open to all societal voices, and debates should be public so they can be part of public opinion making. In more corporatist structures, the focus is on non-governmental organizations and the opportunities they have to play a role in policy debates. In the literature on international governance, much is expected of non-governmental organizations (Keane 2003; Keck and Sikkink 1998; Risse 2000; Verweij 2003; Witte 2002). Yet, these actors can only contribute to input legitimacy if they are able to bring many different voices into the public debate. This depends on their practical capacity to organize, freedom of organization and speech, and to what extent the institutional arrangements at RIO level are conducive to public deliberation.

Control: democracy as specific checks on the use of power in RIOs

Central to research on control legitimacy are the existence and functioning of checks and controls. Such functions typically concern checks on executive powers and therefore involve judicial review (including the level of legalization and access to courts) and parliamentary or corporatist control. Here, again, civic involvement is of interest, but this time to a different end. Here, our question is: are there participatory arrangements and do they contribute to countervailing the power of the executive within the RIO?

Regarding parliamentary arrangements the criteria of evaluation are: is there some parliamentary body? Does it have only an advisory role or effective veto-power? Does it have such competencies on all issues dealt with by the executive? Can it turn to a court? For a more corporatist system our criteria involve: does accreditation of some kind of non-state actors mean that they have formal power? Do these non-state actors have the qualities to develop a powerbase and use it? Much of the literature

on non-state actors in IOs casts doubt on this last point (Cerny 2001; Dahl 1999; Ottaway 2001; Scholte 2002).

Output: democracy as an aim of RIOs' activities

In our short excursus on the legitimacy of RIOs in a global setting we have found that we also have to take into account the ability of RIOs to contribute to the realization of basic values like democracy and the rule of law in member states. Here 'democracy' is to be understood as an aspect of output-legitimacy, as we have defined it above.

The criteria for evaluating a RIO and its arrangements involve here: do they effectively contribute to the furthering of civic participation within the political systems of the member states? Do their actions lead to guaranteeing individual rights within their region? Are citizens of member states empowered to stand up for their rights and interests in participatory arrangements and via a legal system?

Conclusion

We started this chapter by sketching a debate. On the one hand, it was argued that RIOs are not and cannot be legitimate in taking binding decisions. On the other hand RIOs were claimed to solve coordination problems which individual states cannot solve, which makes for their legitimacy and may even bring us to the conclusion that we should opt for a world-state. By analysing these positions we discovered their weak points. More importantly, however, this analysis was of use in articulating the concept of legitimacy. It enabled us to step beyond the conceptual confusions common in the debate on the legitimacy and democracy of RIOs.

The concept of legitimacy, as we have formulated it, refers to functions that must be fulfilled for decisions to be considered as binding. To do so, they must lead to the realization of the common good; we distinguished three aspects that we labelled as *input*, *output* and *control*. This distinction, we pointed out in the last section, helps us to understand the relation between the norms of 'legitimacy' and 'democracy'. It also shows us the way to different sets of criteria for the evaluation of RIOs.

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