Legitimacy, Authority and Global Governance Institutions

A Case Study of the International Monetary Fund

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October 2018

This research was conducted in the School of Social and Political Sciences, Faculty of Arts, at the University of Melbourne. This thesis is submitted in total fulfilment of the degree, Masters by Research.
Abstract

Global governance institutions play an increasingly important and influential role in global politics. Despite a growing focus in the literature on global governance institutions’ legitimacy, the applicability of both standard conceptions and newer theories of political authority and political legitimacy to these actors remains an unresolved issue. In this thesis I address this shortcoming in the literature by engaging in an investigation of the authority and legitimacy of global governance institutions. I demonstrate the incompatibility of standard conceptions of political authority and legitimacy with the current roles of these actors in the international political order. Drawing on Stephen Perry’s (2013) task-efficacy account of legitimacy and Martha Nussbaum’s approach to social justice, I provide accounts of, and standards for, authority and legitimacy. I contend that the promotion of the condition for subjects’ wellbeing, understood as Nussbaum’s ten capabilities, is a sufficiently good or valuable end to justify public authority. Finally, to test the applicability of the proposed account of legitimacy, I undertake a case study of the International Monetary Fund to investigate the ways real world global governance institutions exercise political authority, establish the usefulness of my proposed definition of legitimacy, measure the IMF’s efficacy and consider areas for reform.
Declaration

I declare this thesis comprises only my original work towards the Masters by Research. I further declare due acknowledgement has been made in the text to all other material used; and that the thesis is fewer than the maximum word limit in length, exclusive of summary, abstract, references, and the bibliography.
**Summary**

Since the end of World War II, global governance institutions (GGIs) have played an increasingly influential role in international politics. These actors, such as the United Nations (UN), the International Monetary Fund (IMF), the World Bank, the International Energy Agency (IEA) and the World Trade Organisation (WTO), now exercise substantial influence over international trade, international energy regulation, the international monetary system, as well as over many policy decisions of nation states.¹ GGIs also play a number of valuable governance roles including solving coordination problems, creating and upholding international moral and legal norms, promoting peace and reducing transaction costs.²

The decisions of GGIs and their subsequent effects on ordinary people amount to an exercise of political power, understood most basically as interference in individuals’ autonomy.³ Yet the increased political power of these institutions has often been accompanied by unease about their legitimacy. There is a widespread view that many GGIs have legitimacy deficits due to perceived failures in the promotion of justice, inadequate levels of democratic participation or inefficacy in the performance of their roles.⁴

Despite these perceptions, a comprehensive conceptual framework to understand the legitimacy of GGIs or to determine appropriate justifications for their use of power is yet to be developed in the literature. Within the literature ‘legitimacy’ is an essentially contested term, with debate over both the concept and conception of legitimacy, as well as its normative standards.⁵

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³ I will discuss political authority in greater detail below. For now it is enough to state that political authority, at its most basic level, can be understood as interfering in the autonomy of subjects. Nicole Roughtan, *Authorities: Conflicts, Cooperation, and Transnational Legal Theory* (Oxford: Oxford University Press, 2013), 30.


⁵ The distinction between a concept and a conception derives from John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999): 9. For Rawls the concept of justice is defined in terms of those principles of distribution which must feature in any reasonable account of justice, whereas a conception of justice is a
only further complicates this picture. Some conceptions of legitimacy hold implicit notions of political authority that are highly state-centric. These state-centric accounts neglect certain types of political institutions and thus provide a misleading and one-sided perspective on political authority. If the appropriate subject of enquiry of political legitimacy is political authority, such limited understandings of authority and legitimacy curtail our capacity to consider the legitimacy of certain kinds of institutions.

These conceptual and normative disagreements lead to ambiguous and non-uniform terminology. Actors thus speak at ‘cross purposes’, unable to identify or resolve their core conflict. In the case of GGIs such disagreements are particularly prevalent: there is a general lack of clarity regarding their status as political authorities and the standards to which they should be held as political institutions. Reflection on the purpose of GGIs, and the normative standards which should govern their operation, is thus not merely of theoretical importance, but has the potential to lead to more effective practical reforms.

In this thesis I aim to clarify both the conception and normative standards of legitimacy as they relate to GGIs. Thus, my core research question is: Under what conditions are GGIs justified in exercising authority? Or simply, when is a GGI legitimate? To answer this question, I develop an account of possible normative standards to justify GGIs’ authority. I argue that we should adopt a conceptual account of legitimacy that can be applied to both nation states and GGIs. This requires that the conception of legitimacy has an implicit definition of de facto authority that is broad enough to accommodate both states and GGIs. I argue that Stephen Perry’s definition of legitimacy, ‘the ability of one person intentionally to change the normative situation of another, where it is sufficiently valuable or desirable that the first person possess such an ability with respect to the second’, is a more useful definition of legitimacy in relation to GGIs than the more dominant definition in the literature, that legitimacy creates a right to rule and a duty to obey. However, the focus on the ‘normative situation’ in this account is closely aligned with Hohfeldian powers, which is too narrow to capture the full range of GGI’s authority. I therefore amend this conception to: the ability of a political authority to change the situation of another, where there is sufficient reason or value in the authority holding that capacity.

This statement highlights the distinction between *conceptions* and *normative standards* of legitimacy. This distinction between the conception of legitimacy and standards of legitimacy is important, as both aspects need to be considered in relation to the kinds of authority exercised by GGIs in global politics. A *conception* of legitimacy offers a specification of the concept or an interpretation of what it means to say that an authority is legitimate. For any concept, there can be competing conceptions. For example, one common conception of legitimacy is that it entails the right of an authority to rule and a corresponding duty of subjects to obey. Another conception holds that legitimacy ‘refers to the validity of political decisions and political orders and their claim to legitimacy."

The *normative standards* of legitimacy set out the conditions that must be satisfied for an authority to be legitimate and also serve as criteria for judgements of the legitimacy of an authority. For example, an input or procedural view of normative standards emphasises processes or how decisions are reached. On this view, if the ‘process gives voice to and empowers relevant stakeholders appropriately... if the decision-making process is even-handed and subject to checks and balances” then the authority is legitimate. Democracy is a common example of an input or ‘fair procedure’ account of legitimacy. Conversely, output or instrumentalist approaches to legitimacy emphasise an authority’s performance, the outcomes it produces and its efficacy in promoting certain predetermined ends. Such approaches are sometimes called *teleological* because of their focus on ends. Teleological accounts contrast with deontological accounts, which morally require or forbid certain political actions, regardless of their outcomes. The requirement that political authorities have the consent of the governed is an example of a deontological approach.

Consistent with my focus upon normative standards, in this thesis I adopt a normative, rather than a descriptive, concept of political legitimacy. Normative accounts of legitimacy generally consider the

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11 Ibid.
conditions under which political authority is justified, or the standards which need to be met for a political authority to be ‘morally justified in wielding political power.’\textsuperscript{12} Normativity is primarily concerned with reasons, both moral and prudential,\textsuperscript{13} which can count in favour of or against something, and direct what one \textit{ought} to do, believe or feel.\textsuperscript{14} Normative accounts of legitimacy thus appeal to reasons to explicate what would justify authority and to indicate what standards must be met before subjects would be under an obligation to support an authority and/or follow its directives.

Normative accounts can be contrasted with descriptive accounts of legitimacy, which were prominently promoted by Max Weber. A Weberian approach focuses on what people believe about an authority.\textsuperscript{15} In these accounts a regime is legitimate when the people over whom it rules have belief or faith (\textit{Glaube}) in that regime, that is, the subjects believe the regime is legitimate.\textsuperscript{16} An emphasis on the normative over the descriptive does not deny that there is a relationship between the way subjects view authorities and the legitimacy of those authorities. Indeed, many theorists\textsuperscript{17} have noted the importance of subjects’ acceptance of authorities for authorities to be effective in the conduct of their work, which can have implications for their legitimacy.\textsuperscript{18} However, while subjects’ beliefs may have a bearing on the legitimacy of an authority, it is the normative account that provides a justification for authority and consequently is the primary focus in this thesis.


\textsuperscript{17} See for example, Buchanan and Keohane, ‘The Legitimacy of Global Governance Institutions’.

\textsuperscript{18} Many accounts of legitimacy consider efficacy as a necessary, though not sufficient component of legitimacy. For a discussion on the role of efficacy and various accounts that include it in their assessment of legitimacy, see Leslie Green, ‘The Duty to Govern’, \textit{Legal Theory} 13 (2007): 165-185, in particular, 168-171.
Implicit in this conception of legitimacy is a question about the normative standards of legitimacy: what reason or value is sufficient to justify public authority? After considering a number of possible ends, I contend that the promotion of the enabling conditions for subjects' wellbeing is a sufficiently good or valuable end to justify public authority. I offer Martha Nussbaum's capabilities approach as a substantive account of what the conditions for wellbeing could be and as a reference against which authorities' efficacy can be measured. Despite some of the theoretical challenges of Nussbaum's account, I argue its commitment to the enabling conditions for wellbeing, rather than actual wellbeing, goes a long way to address some of the concerns about paternalism that naturally arise when considering more objectivist accounts of legitimacy.

The thesis is structured as follows: in Chapter 1 I critically analyse some of the most common conceptions of legitimacy, including the 'right to rule and duty to obey', and argue that this account does not adequately reflect how authority is exercised in the modern world. Instead, this definition restricts the types of institutions that can be seen as authorities to those that issue directives and consequently either excludes international organisations from assessments of legitimacy or requires varying definitions of authority for different institutional types. I argue that holding varying definitions of legitimacy would be a mistake and create unnecessary confusion in the field. To address this issue, I consider other definitions of legitimacy that have been adopted specifically in relation to international governance institutions but find similar problems. The chapter concludes by explicating and amending Perry's definition of legitimacy mentioned above as a solution to these problems.

I begin chapter 2 by considering some possible normative standards of legitimacy to determine what ends could be sufficiently valuable or desirable to justify public authority. I examine utilitarianism, Rawls' theory of justice, Buchanan and Keohane's account of GGI's legitimacy and notions of the common good. Drawing on the common good tradition, I argue that the promotion of the necessary enabling conditions for people's wellbeing is a sufficiently good end to justify authority. I offer Martha Nussbaum's capabilities approach as a means to understand and measure the enabling conditions of wellbeing. Recognising that all people flourish in different ways, the chapter focuses on the enabling conditions for wellbeing rather than actual wellbeing. The aim of the chapter is to contribute to discussions on the proper aims of authority.

In the final chapter I apply the theory of legitimacy developed in the previous two chapters to the International Monetary Fund (IMF). As one of the most powerful and controversial global governance
institutions in the world, the IMF exemplifies many of the core features of GGIs and is hence a suitable subject for a case study. The IMF, like other prominent GGIs, exercises its authority by issuing rules to its members and attaching consequences for non-compliance, as well as by more subtle means, such as influencing the policies of members and working in conjunction with other political actors. As is the case with other GGIs, moreover, the IMF’s main roles are to solve international coordination problems and to assist states to achieve ends they cannot achieve on their own. The IMF also meets Roughan’s criteria to be a public authority and has broad membership, further justifying its selection as an exemplary GGI.

My case study argues that the IMF’s historically rigid response to financial crises, influenced by Washington Consensus ideology, has undermined its legitimacy. A change to the IMF’s founding document to focus its policy on promoting people’s wellbeing would help to solve this problem. The IMF case study thus seeks both to demonstrate the usefulness of the theoretical approach taken in the earlier chapters for assessing the legitimacy of GGIs, and to use the approach to recast the debate over the IMF’s legitimacy. I aim to situate the existing critiques of the IMF – particularly relating to issues of representation, accountability, transparency and efficacy – by clarifying the conceptual framework which enables us to make assessments of legitimacy. The ability to understand and assess the IMF’s legitimacy, and indeed that of all GGIs, is imperative. Given the increased political power of the IMF, legitimacy analysis enables us to guide efforts for reform, ensure GGIs are focused on desirable goals and provide a basis for greater support and stability. A clear understanding of the conception and normative standards of GGIs’ legitimacy also may enable us better to design any new institutions in the future.
Acknowledgements

As with all endeavours that are worth doing, I would not have completed this thesis without substantial help and support from those around me.

I would like to thank my supervisors, Terry Macdonald and Daniel McCarthy, and committee chair, Kate Macdonald, for their guidance, patience and many long discussions, in which they let me explore ideas and pursue my interests.

I would also like to thank my family and friends for providing endless moral and practical support, particularly my father, mother, step-mother, sisters, Kim Mereine, Edward Tsen, Mark Sansom, Alison Hayles and Richard James.

Finally, I would like to acknowledge the guidance and support of George Duke, without whom I would not have done this thesis.
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Introduction

Since the end of World War II, global governance institutions (GGIs) have played an increasingly influential role in international politics. These actors, such as the United Nations (UN), the International Monetary Fund (IMF), the World Bank, the International Energy Agency (IEA) and the World Trade Organisation (WTO), now exercise substantial influence over international trade, international energy regulation, the international monetary system, as well as over many policy decisions of nation states.1 GGIs also play a number of valuable governance roles including solving coordination problems, creating and upholding international moral and legal norms, promoting peace and reducing transaction costs.2 The decisions of GGIs and their subsequent effects on ordinary people amount to an exercise of political power, understood most basically as interference in individuals’ autonomy.3 Yet the increased political power of these institutions has often been accompanied by unease about their legitimacy. There is a widespread view that many GGIs have legitimacy deficits due to perceived failures in the promotion of justice, inadequate levels of democratic participation or inefficacy in the performance of their roles.4

Despite these perceptions, a comprehensive conceptual framework to understand the legitimacy of GGIs or to determine appropriate justifications for their use of power is yet to be developed in the literature. Within the literature ‘legitimacy’ is an essentially contested term, with debate over both the concept and

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3 I will discuss political authority in greater detail below. For now it is enough to state that political authority, at its most basic level, can be understood as interfering in the autonomy of subjects. Nicole Roughan, Authorities: Conflicts, Cooperation, and Transnational Legal Theory (Oxford: Oxford University Press, 2013), 30.
conception of legitimacy, as well as its normative standards. The increasingly influential role of GGI only further complicates this picture. Some conceptions of legitimacy hold implicit notions of political authority that are highly state-centric. These state-centric accounts neglect certain types of political institutions and thus provide a misleading and one-sided perspective on political authority. If the appropriate subject of enquiry of political legitimacy is political authority, such limited understandings of authority and legitimacy curtail our capacity to consider the legitimacy of certain kinds of institutions.

These conceptual and normative disagreements lead to ambiguous and non-uniform terminology. Actors thus speak at ‘cross purposes’, unable to identify or resolve their core conflict. In the case of GGI such disagreements are particularly prevalent: there is a general lack of clarity regarding their status as political authorities and the standards to which they should be held as political institutions. Reflection on the purpose of GGI, and the normative standards which should govern their operation, is thus not merely of theoretical importance, but has the potential to lead to more effective practical reforms.

In this thesis I aim to clarify both the conception and normative standards of legitimacy as they relate to GGI. Thus, my core research question is: Under what conditions are GGI justified in exercising authority? Or simply, when is a GGI legitimate? To answer this question, it is necessary to explicate more precisely the distinction between conceptions and normative standards of legitimacy. This distinction between the conception of legitimacy and standards of legitimacy is important, as both aspects need to be considered in relation to the kinds of authority exercised by GGI in global politics.

A conception of legitimacy offers a specification of the concept or an interpretation of what it means to say that an authority is legitimate. For any concept, there can be competing conceptions. For example, one common conception of legitimacy is that it entails the right of an authority to rule and a

5 The distinction between a concept and a conception derives from John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999): 9. For Rawls the concept of justice is defined in terms of those principles of distribution which must feature in any reasonable account of justice, whereas a conception of justice is a particular interpretation (or specification) of those principles. I develop this distinction in relation to the question of legitimacy in more detail below.
corresponding duty of subjects to obey.\textsuperscript{8} Another conception holds that legitimacy ‘refers to the validity of political decisions and political orders and their claim to legitimacy.’\textsuperscript{9}

The \textit{normative standards} of legitimacy set out the conditions that must be satisfied for an authority to be legitimate and also serve as criteria for judgements of the legitimacy of an authority. For example, an input or procedural view of normative standards emphasises processes or how decisions are reached. On this view, if the ‘process gives voice to and empowers relevant stakeholders appropriately... if the decision-making process is even-handed and subject to checks and balances’\textsuperscript{10} then the authority is legitimate. Democracy is a common example of an input or ‘fair procedure’ account of legitimacy. Conversely, output or instrumentalist approaches to legitimacy emphasise an authority’s performance, the outcomes it produces and its efficacy in promoting certain predetermined ends.\textsuperscript{11} Such approaches are sometimes called \textit{teleological} because of their focus on ends. Teleological accounts contrast with deontological accounts, which morally require or forbid certain political actions, regardless of their outcomes. The requirement that political authorities have the consent of the governed is an example of a deontological approach.

Consistent with my focus upon normative standards, in this thesis I adopt a normative, rather than a descriptive, concept of political legitimacy. Normative accounts of legitimacy generally consider the conditions under which political authority is justified, or the standards which need to be met for a political authority to be ‘morally justified in wielding political power.’\textsuperscript{12} Normativity is primarily concerned with reasons, both moral and prudential,\textsuperscript{13} which can count in favour of or against something, and direct what

\begin{itemize}
\item Michael Zürn, ‘Global Governance and Legitimacy Problems’, 260.
\item Ibid.
\end{itemize}
one ought to do, believe or feel.\textsuperscript{14} Normative accounts of legitimacy thus appeal to reasons to explicate what would justify authority and to indicate what standards must be met before subjects would be under an obligation to support an authority and/or follow its directives.

Descriptive accounts of legitimacy, by contrast, follow a Weberian approach and focus on what people believe about an authority.\textsuperscript{15} In these accounts a regime is legitimate when the people over whom it rules have belief or faith (Glaube) in that regime, that is, the subjects believe the regime is legitimate.\textsuperscript{16} This faith can be based on the ruler, for example, as a result of the leader's charisma. There can also be faith in a regime due to its longevity, based on traditions. Finally, people may believe in the legitimacy of a regime for legal/rational reasons, that is, due to a regime's reasonable or rational system of laws which is made both explicit and publicly accessible (such as through a constitution). Descriptive accounts of legitimacy do not attach a value judgement to the term; instead legitimacy indicates what people think of, or believe about, a political authority.\textsuperscript{17} Descriptive accounts thus cannot provide a justification for the use of power by political authorities; instead they merely describe what subjects believe about an authority. In such cases it is always reasonable to ask whether people are justified in holding their views or their views are valid. For example, it is possible that people hold mistaken views due to misinformation.

To determine whether an authority is justified in exercising authority we need to consider normative accounts of legitimacy that provide the standards which must be met for a political institution to be legitimate. It is possible to derive a justification for authority based on a descriptive account, but to do so, one must assume that people's belief in an authority's legitimacy is sufficient to justify that authority. This form of justification moves beyond the descriptive. Instead it becomes normative, deriving its justification from the fact that subjects believe that authority is legitimate. The account attributes


\textsuperscript{15} See for example, Cathryn Johnson, Timothy J. Dowd and Cecilia L. Ridgeway, 'Legitimacy as a Social Process', \textit{Annual Review of Sociology} 32 (2006): 53-78, in particular, 55-56.


\textsuperscript{17} See Zürn, 'Global Governance', 260.
normative weight to subjects' beliefs. As David Beetham puts it, a 'power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs'.

An emphasis on the normative over the descriptive does not deny that there is a relationship between the way subjects view authorities and the legitimacy of those authorities. Indeed, many theorists have noted the importance of subjects' acceptance of authorities for authorities to be effective in the conduct of their work, which can have implications for their legitimacy. However, while subjects' beliefs may have a bearing on the legitimacy of an authority, it is the normative account that provides a justification for authority and consequently is the primary focus in this thesis.

Authority

At this point it is instructive to clarify the term 'authority' in greater detail. There are many different forms of authority, including that of a doctor over a patient, a parent over a child and a mediator over two parties to a dispute. Doctors hold epistemic authority; they have specialised knowledge of a subject area, which makes patients more likely to defer to their advice rather than attempt to act on their own. Epistemic authority is not usually binding. While a patient would do well to listen to the advice of a good doctor, they are not required to accept that advice. The role of a mediator in a dispute is an instance of practical authority. The mediator does not need specific knowledge or experience. However, the outcome of the mediation can be binding on the parties. The authority of a parent over a child sits between epistemic and practical authority. A parent has authority by virtue of being more experienced than their child and their commands can be binding in certain circumstances.

Normative concepts of political legitimacy are concerned with providing a justification for political authority. Political authority is often understood as form of practical authority, though it may draw on epistemic authority for its justification. Implicit in the normative concept of legitimacy is a distinction between de facto political authority and legitimate political authority. A de facto authority is one that

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19 See for example, Buchanan and Keohane, ‘The Legitimacy of Global Governance Institutions’.
20 Many accounts of legitimacy consider efficacy as a necessary, though not sufficient component of legitimacy. For a discussion on the role of efficacy and various accounts that include it in their assessment of legitimacy, see Leslie Green, ‘The Duty to Govern’, Legal Theory 13 (2007): 165-185, in particular, 168-171.
22 Ibid., 10 and 22.
holds effective authority and makes a claim right to possess that authority. That is, the authority interferes in individuals’ lives and claims to be legitimate. A legitimate authority, like de facto authority, interferes in people’s lives, but also meets some standards of legitimacy that justify its use of power.

Recent scholarship on GGIs has noted that the ways these institutions exercise authority differs from that of more traditional instances of political authority, such as those which states and legal systems exercise. Allen Buchanan, for example, has noted that international institutions frequently do not rule in the way state governments rule, as ‘they possess no enforcement powers and [sometimes] merely issue admonitions to noncomplying states.’ In other instances, GGIs may “rule” in the sense that their rules can be binding on member, ‘but the judgments of its dispute resolution body are not coercively enforced commands.’ Thus, tying a definition of authority to particular functions of authorities or the ways institutions exercise authority can preclude some institutions from being considered as political authorities.

One possible way to avoid this dilemma is to focus on the attributes of political authorities, rather than their functions, to identify the kinds of institutions whose legitimacy we should question. Nicole Roughan has developed an account of political authorities which does just that (though she calls it ‘public authority’. She defines ‘public authority’ as ‘governing bodies/institutions, including both legal and political institutions… [that operate] across state and non-/supra-/intra-/inter-state locations.’ Roughan argues that the authority of these governing bodies can be distinguished from other kinds of authority, such as that of a parent over their child or a doctor over their patient, by the presence of four distinguishing features: (i) public authority must be institutionalised; (ii) public authority’s formal basis must be public (such as a state institution constituted under public law); (iii) its connection with its subjects must be impersonal; and (iv) its interactions with other public authorities are formalised. To illustrate the last point Roughan provides the example of a religious authority that is ‘located within, at

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26 Ibid., 176.
27 Roughan, Authorities, 29.
28 Ibid., 28-29.
the head of, or in a formal cooperation with an official, publicly constituted structure of governance’.\textsuperscript{29} This form of religious institution is a public authority. Where a religious institution is not formally associated with such public institutions it is best thought of as a private authority.\textsuperscript{30}

On this account, public authority is a special kind of political authority. We can use this description of public authority to begin to question the necessary conditions for such authorities to achieve legitimacy. Consequently, the question of political legitimacy applies to both public and political authority. In this thesis when I use the term ‘authority’, unless explicitly stated otherwise, I mean public authority, understood as those political institutions possessing Roughan’s four characteristics.

Method

In this thesis I approach the question of the legitimacy of GGIs by proceeding from a description of de facto authority as a basis from which to identify the conditions that must be present for the authority to achieve legitimacy. An alternative approach is to begin with the ‘focal meaning’ of the term ‘authority’. Focal meaning, or central case analysis, begins from an account of the ideal type and explains instances of defect by comparison with the ideal or central case.\textsuperscript{31} Each approach is valid; however, I begin from a descriptive account of de facto authority (namely Roughan’s account of public authority) so as not to accidentally exclude certain expressions of authority based on a definition of legitimacy. To investigate which conception of legitimacy is most useful to further explicate the features of authority we most seek in our political institutions, I undertake critical and textual analysis of the most influential conceptions in the literature. My aim is to uncover the underlying assumptions and to find gaps between the explanatory and normative value of existing theories. This approach may be clarified by noting its affinities with Aristotle’s endoxic method and his appeal to the phenomena.\textsuperscript{32} This method begins by examining the credible, commonly held beliefs (the endoxa) in a subject area and compares them to the appearances of things (the phenomena). For Aristotle the nature of human affairs excludes the kind of theoretical precision found in other disciplines, such as mathematics. He argues, rightly I believe, that we should only

\textsuperscript{29} Ibid., 29.
\textsuperscript{30} Ibid.
bring the level of rigor to a discipline that the discipline allows.\textsuperscript{33} Thus, a conception of political legitimacy will never be completely precise and must be responsive to the contextual particulars of each situation. My approach to the conceptual problem of legitimacy is broadly similar. I begin from the most influential conceptions of legitimacy and consider their applicability to the facts of real world GGIs.

To provide greater substance to the conception of legitimacy, I consider the normative standards of legitimacy. I seek standards that can act as normative reasons to justify an instrumental conception of authority. I consider possible normative standards by drawing on analytic normative political theory. Unlike some descriptive methodologies of social science, influenced by Weber, normative political theory is concerned with questions that can guide our behaviour, rather than describe it. As Daniel McDermott argues, normative political theory is primarily concerned with questions of ‘oughts’ – what actors and subjects ought to do in the political realm.\textsuperscript{34} McDermott states, ‘Whereas social scientists aim to determine the empirical facts about human behaviour and institutions, political philosophers aim to determine what ought to be done in light of that information.’\textsuperscript{35} This requires a justification by appeal to reasons. The question then becomes, what are the right reasons?

Most of the recent normative accounts of legitimacy have been subjectivist, in that they provide ‘justifications to the subject’.\textsuperscript{36} Such accounts justify authority through engaging with people, whether that be through democracy, social choice or public reason. Normative standards that are ‘subjective’ come out of the liberal tradition and tend to hold the freedom to pursue subjectivist interests as the foundation of legitimacy.\textsuperscript{37} I depart from this approach. As with descriptive accounts of legitimacy, which rely on people’s subjective thoughts about an institution, I question subjective approaches for determining normative standards. This is based on the intuition that if it is reasonable to ask if people are misguided or mislead about an institution (as they can be in descriptive accounts of legitimacy), it must also be reasonable to ask if people are misguided or misled about their subjective interests. Instead of

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\textsuperscript{33} Aristotle, argues ‘… precision is not to be sought for alike in all discussions… look for precision in each class of things just so far as the nature of the subject admits; it is evidently equally foolish to accept probable reasoning from a mathematician and to demand from a rhetorician scientific proofs.’ \textit{Nicomachean Ethics}, 1094b13.
\textsuperscript{35} Ibid.
\textsuperscript{36} Roughan, \textit{Authorities}, 30.
\end{flushleft}
appealing to subject interests in the normative standards, I argue that authority can be justified through
appeal to more objective goods or reasons.

To lend substantive support to the conception and normative standards I develop, I undertake a case
study. Case studies are a particularly valuable method for applying theory to practice and serve two key
functions. The first is to test the theory to ensure it has a sufficiently strong relationship with the real
world, thus ensuring it has explanatory and normative power. The second function is to provide insights
into, and guidance for, the goals, outcomes and competing ideologies that operate within and around
political institutions. The case study shows the necessity of developing additional analytic steps to apply
the theory to practice. These steps use critical analysis to assess the legitimacy of the subject of the case.

A further important consideration is how to appropriately reflect authorities’ differing levels of
responsibility based on their functions within an assessment of their legitimacy. While this question
relates to both the theory of authority and the theory of legitimacy, it is best to take a methodological
approach to address it. This is because, as stated above, a general conception of political legitimacy that
is applicable to all forms of political authority cannot be too prescriptive and must respond to the
particular situation of each political authority. This is particularly the case for GGI as their roles and
political, economic and historical contexts can vary so significantly. Consequently, to assess a GGI’s
legitimacy, in a manner that appropriately reflects its role, it is important to determine the authority’s
area of specialisation, as well as its political and economic context, its interactions with other authorities
and the remit of other authorities working alongside it. In chapter three I develop a methodology to
undertake this analysis.

Argument and Structure

As suggested above, in this thesis I consider the conceptual problem associated with my core research
question (under what conditions are global governance institutions legitimate?) and develop an account
of possible normative standards to justify GGI’s authority. I argue that we should adopt a conceptual
account of legitimacy that can be applied to both nation states and GGIs. This requires that the
conception of legitimacy has an implicit definition of de facto authority that is broad enough to

38 Nussbaum highlights the important relationship between political philosophy and the real world in her article,
accommodate both states and GGIs. I argue that Stephen Perry's definition of legitimacy, ‘the ability of one person intentionally to change the normative situation of another, where it is sufficiently valuable or desirable that the first person possess such an ability with respect to the second’, is a more useful definition of legitimacy in relation to GGIs than the more dominant definition in the literature, that legitimacy creates a right to rule and a duty to obey. However, the focus on the ‘normative situation’ in this account is closely aligned with Hohfeldian powers, which is too narrow to capture the full range of GGI’s authority. I therefore amend this conception to: the ability of a political authority to change the situation of another, where there is sufficient reason or value in the authority holding that capacity.  

Implicit in this conception of legitimacy is a question about the normative standards of legitimacy: what reason or value is sufficient to justify public authority? After considering a number of possible ends, I contend that the promotion of the enabling conditions for subjects' wellbeing is a sufficiently good or valuable end to justify public authority. I offer Martha Nussbaum’s capabilities approach as a substantive account of what the conditions for wellbeing could be and as a reference against which authorities’ efficacy can be measured. Despite some of the theoretical challenges of Nussbaum’s account, I argue its commitment to the enabling conditions for wellbeing, rather than actual wellbeing, goes a long way to address some of the concerns about paternalism that naturally arise when considering more objectivist accounts of legitimacy.

The thesis is structured as follows: in Chapter 1 I critically analyse some of the most common conceptions of legitimacy, including the ‘right to rule and duty to obey’, and argue that this account does not adequately reflect how authority is exercised in the modern world. Instead, this definition restricts the types of institutions that can be seen as authorities to those that issue directives and consequently either excludes international organisations from assessments of legitimacy or requires varying definitions of authority for different institutional types. I argue that holding varying definitions of legitimacy would be a mistake and create unnecessary confusion in the field. To address this issue, I consider other definitions of legitimacy that have been adopted specifically in relation to international governance institutions but find similar problems. The chapter concludes by explicating and amending Perry’s definition of legitimacy mentioned above as a solution to these problems.

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40 This includes public authority as a type of political authority.
I begin chapter 2 by considering some possible normative standards of legitimacy to determine what ends could be sufficiently valuable or desirable to justify public authority. I examine utilitarianism, Rawls’ theory of justice, Buchanan and Keohane’s account of GGI’s legitimacy and notions of the common good. Drawing on the common good tradition, I argue that the promotion of the necessary enabling conditions for people’s wellbeing is a sufficiently good end to justify authority. I offer Martha Nussbaum’s capabilities approach as a means to understand and measure the enabling conditions of wellbeing. Recognising that all people flourish in different ways, the chapter focuses on the enabling conditions for wellbeing rather than actual wellbeing. The aim of the chapter is to contribute to discussions on the proper aims of authority.

In the final chapter I apply the theory of legitimacy developed in the previous two chapters to the International Monetary Fund (IMF). As one of the most powerful and controversial global governance institutions in the world, the IMF exemplifies many of the core features of GGIs and is hence a suitable subject for a case study. The IMF, like other prominent GGIs, exercises its authority by issuing rules to its members and attaching consequences for non-compliance, as well as by more subtle means, such as influencing the policies of members and working in conjunction with other political actors. As is the case with other GGIs, moreover, the IMF’s main roles are to solve international coordination problems and to assist states to achieve ends they cannot achieve on their own. The IMF also meets Roughan’s criteria to be a public authority and has broad membership, further justifying its selection as an exemplary GGI.

My case study argues that the IMF’s historically rigid response to financial crises, influenced by Washington Consensus ideology, has undermined its legitimacy. A change to the IMF’s founding document to focus its policy on promoting people’s wellbeing would help to solve this problem. The IMF case study thus seeks both to demonstrate the usefulness of the theoretical approach taken in the earlier chapters for assessing the legitimacy of GGIs, and to use the approach to recast the debate over the IMF’s legitimacy. I aim to situate the existing critiques of the IMF – particularly relating to issues of representation, accountability, transparency and efficacy – by clarifying the conceptual framework

41 For a discussion of the core features of GGIs, see Buchanan and Keohane, ‘The Legitimacy of Global Governance Institutions’, 406-408.
42 Ibid., 407.
which enables us to make assessments of legitimacy. The ability to understand and assess the IMF’s legitimacy, and indeed that of all GGIs, is imperative. Given the increased political power of the IMF, legitimacy analysis enables us to guide efforts for reform, ensure GGIs are focused on desirable goals and provide a basis for greater support and stability. A clear understanding of the conception and normative standards of GGIs’ legitimacy also may enable us better to design any new institutions in the future.

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Chapter I – Conceptions of Legitimacy

Defining legitimacy is essential in assessing the justification of any public authority, yet both the concept and conception of legitimacy remain highly contested. Within the literature there are numerous accounts of legitimacy. These competing accounts make the task of assessing the legitimacy of authority difficult. Ian Hurd, for example, defines legitimacy as ‘the normative belief by an actor that a rule or institution ought to be obeyed.’ Michael Zurn states that from a normative perspective, legitimacy ‘refers to the validity of political decisions and political orders and their claim to legitimacy.’ Stephen Perry, on the other hand, argues ‘that the conceptual and moral core of legitimate political authority... is the ability of one person intentionally to change the normative situation of another, where it is sufficiently valuable or desirable that the first person possess such an ability with respect to the second.’ While each of these definitions capture important aspects of conceptions of legitimacy, each contain limitations that constrain their broader adoption. Hurd is limited by his reliance on the subject’s perception of legitimacy, whereas Zurn’s more flexible definition is constrained by its lack of specificity. Perry’s account, as I argue in greater detail below, is the most useful to apply to a broad range of authorities, but its focus on ‘normative situations’ may lessen its applicability. My intention in this first chapter is to bring some clarity to ongoing debates over both the concept and conception of legitimacy by developing a normative conception of legitimacy which can be applied to both states and global governance institutions (GGIs).

Any conception of legitimacy has implications for how we understand political authority. This is because all concepts necessarily have a subject or ‘domain of application’, which establishes the objects and areas, ‘of which it is meaningful to ask whether they fall under the given concept or not.’ For the concept of political legitimacy, political or public authority is the appropriate domain of application. Thus, both the concept and conception of political legitimacy and political/public authority are intrinsically linked. We cannot provide an account of legitimacy without an account of authority. Many of the most dominant conceptions of legitimacy were developed to explain and justify the authority of nation states or legal

systems. While some more recent scholarship has focused on the authority of global governance institutions, the scholarship on nation states and law remains dominant. These state-centric accounts tend to focus on three key features of state a legal authority: the sovereignty of the state, understood as supreme authority within a territory; the capacity to issue binding directives; and the monopoly on the use of force. This focus on states has led to conceptions of legitimacy that limit the domain of political authority to the kinds of powers exercised by nation states. These limitations ignore the shift in authority during the twentieth century away from the sovereignty model of state authority towards more globalised and plural forms of governance and authority. These state-centric definitions of legitimacy have thus made it more difficult to recognise GGLs as forms of political authority, obscuring the increasingly pertinent issues of legitimacy surrounding these institutions.

This chapter’s examination of conceptions of legitimacy and their relationship to our understanding of authority begins by discussing one of the most dominant theories in the literature, namely the right to rule, duty to obey. Through critical analysis and interpretation of the development of Allen Buchanan’s thought on the right to rule, I demonstrate why this definition has limited use when considering the authority of GGLs. I then consider another prominent conception of legitimacy; that the central purpose of legitimacy is to provide a justification for the use of coercion. I find that each of these conceptions of legitimacy hold an implicit account of authority which is state-centric.

After showing the limitations of state-centric conceptions of legitimacy, I consider the account of authority promulgated by Debora Avant, Martha Finnemore and Susan Sell. I argue that though Avant, ....

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10 Buchanan, *The Heart of Human Rights*. 
Finnemore and Sell developed their account of authority specifically in relation to non-state actors, their account is still too narrow to capture the full range of authority exercised by global governance institutions. To overcome the problems presented by these definitions of legitimacy I conclude by exploring Stephen Perry’s conception of legitimacy. If supplemented by Roughan’s account of public authority and modified to take away its implicitly legalistic understanding of authority, Perry’s account is a more useful conception of legitimacy as it can be applied to all forms of political/public authority.

The Right to Rule and Duty to Obey

The conception that legitimacy entails the right of an authority to rule and a duty of subjects to obey is the most common normative conception of legitimacy in the literature.\(^1\) The right to rule is usually taken to mean that ‘A has legitimate authority over B when A's directives are [presumptive,] content-independent and exclusionary reasons for action for B’.\(^2\) Implicit within this definition of legitimacy is an account of authority. This definition implies that authorities ‘rule’, where ‘ruling’ is understood as the capacity to issue directives that provide presumptive, content-independent, exclusionary reasons for action for subjects. Put another way, an authority’s directives provide subjects with reasons to act in particular ways that exclude other reasons subjects may have to act in this or that way. Subjects are obligated to obey these directives, not because they agree with the content of the directives but because the authority has issued them (i.e. the obligation exists independently of the content of the directives). A common caveat placed on content-independent obligations is that there is only a presumptive obligation to obey, where presumptive means subject to countervailing moral considerations.

The problem with applying ‘the right to rule’ to GGIs

This conception of legitimacy limits legitimacy’s domain of application to institutions that issue directives, which are taken by subjects to be binding, presumptive, content-independent exclusionary reasons for action. On this account, the conception of political/public authority would only capture those institutions which issue directives. This account would thus exclude most GGIs, as many either do not issue directives or do not use directives as their main means of exercising authority, but rather use


\(^2\) Tasioulas, ‘Legitimacy of International Law’, 98.
mediums such as influence, norm creation, regulation\textsuperscript{13} or binding contracts to exercise authority.\textsuperscript{14} Excluding these institutions from the domain of political legitimacy would be a mistake. GGI\textsubscript{s} exercise considerable political power and possess the capacity to change or influence the conditions and opportunities that structure the lives of ordinary people.

As I will demonstrate in greater detail in chapter 3, the significant influence of GGI\textsubscript{s} is exemplified by the International Monetary Fund (IMF). While the IMF possesses some capacity to issue directives to its members, much of its capacity to affect the autonomy of ordinary people is exerted in other ways, often indirectly. For example, through its surveillance and reporting functions, the IMF analyses the economies of its members and the global economy, provides fiscal and monetary policy recommendations and forecasts economic growth prospects. The IMF’s recommendations and forecasts are not binding on member governments but can influence markets and investors, increasing or decreasing consumer confidence, investment and the credit ratings of nation states. This is a very real, though indirect, form of public authority as it changes the options available to subjects and can have significant impacts on their lives.\textsuperscript{15} Yet, a definition of legitimacy (and consequently authority) that includes ‘ruling’ would exclude this form and other forms of political power from scrutiny of legitimacy. The notion of ‘ruling’ and issuing directives is thus unreflective of the way power operates in the modern world because it ignores forms of power more commonly exercised by GGI\textsubscript{s}.\textsuperscript{16} This either makes it difficult for GGI\textsubscript{s} to be considered as authorities at all or it necessitates multiple definitions of authority and legitimacy.

That GGI\textsubscript{s} should be regarded as public authorities is clear from the level of power and influence they wield, their role in global governance, and from the definition of public authority provided in the introduction. Thus, to maintain the right to rule and duty to obey conception of legitimacy, there would need to be different definitions of legitimacy for states and GGI\textsubscript{s}, which would also necessitate a different

\begin{thebibliography}{10}
\bibitem{Macdonald1} See Macdonald, ‘What’s so Special About States?’ and Zürn, ‘Global Governance and Legitimacy Problems’.
\bibitem{Macdonald2} The IMF for example, exercises a great deal of power through setting the terms of loan contracts to struggling nation states. The terms of the loans are not directives (they are negotiated contracts), yet they can have significant ramifications of budgetary policies of the borrowing nation. For further discussion on the forms of power exercised by non-state actors see for example Macdonald, ‘What’s so Special about States?’; Zürn, ‘Global Governance and Legitimacy Problems’; and Gráinne de Búrca, Robert Keohane and Charles Sable, ‘Global Experimentalist Governance’, \textit{British Journal of Political Science} 44 (2014): 477-486.
\bibitem{IMF} Of course, this is not the only way in which the IMF can affect people’s lives. A more direct way is its imposition of conditional loans, as I will discuss in greater detail in chapter III.
\end{thebibliography}
definition of political authority for states and GGlS. This approach – that the legitimacy of states and GGlS should be conceptualised differently – is a common position in the literature. Many theorists argue that, because GGlS exercise political power in new ways, traditional state-centric accounts of legitimacy cannot be applied.\textsuperscript{17} In support of this position, Thomas Christiano states that, ‘Overall, these are complex institutions with a number of parts and so different principles [of legitimacy] may apply to the different parts.’\textsuperscript{18} Another commonly stated reason for this position is the impracticality of applying common standards of legitimacy at the global level, particularly democratic standards.\textsuperscript{19} This position is based on the assumption that democracy is an inherent component of any conception of state legitimacy. According to this line of argument, since we do not have a global democracy and there are too many practical impediments to achieving global democracy in the foreseeable future, democratic standards of legitimacy cannot be applied to international or trans-national actors and consequently new or different standards of legitimacy should be applied to non-state actors.

A number of theorists, including Allen Buchanan, Nicole Roughan and Joseph Raz,\textsuperscript{20} support the view that there should be no distinction between the authority of a nation state and the authority of a GGlS. Consequently, there should be no distinction between the conception of legitimacy applied to different authoritative institutions. Roughan argues that the nature of authority is always consistent, no matter where it is located.\textsuperscript{21} Raz holds that there is only one general conception of authority that can be applied to all instances of authority including governments, parents, doctors, etc, and consequently, all authorities should have the same form of justification.\textsuperscript{22} For Raz an authority is justified if it enables subjects to better comply with the reasons that apply to them than they would on their own. This is not to say that in particular instances some additional justification may not be required. Instead, Raz contends that no supplementary justification can legitimise an authority that does not meet his basic

\textsuperscript{18} Christiano 2012.
\textsuperscript{20} See Buchanan, The Heart of Human Rights, 176; Roughan, Authorities, 27-30; and Raz, Ethics in the Public Domain.
\textsuperscript{21} Roughan, Authorities, 28.
\textsuperscript{22} Raz, Ethics in the Public Domain.
standard. His underlying point is that there is only one conception of legitimacy that can be applied to all authorities.

Applying multiple definitions of legitimacy and authority to different types of institutions obscures the meanings of the terms. While GGIs, their structures and mechanisms for decision-making tend to differ from those of nation states, the effects of both political and public authorities are the same. All public authorities restrict or interfere in the autonomy of subjects. The way GGIs exercise public authority, such as through influence, may be different to the way nation states exercise authority, but what they do (affect the conditions structuring people’s lives) is the same as what nation states do. Given that the right to rule, duty to obey definition of legitimacy focuses on directives, employing this conception of legitimacy for nation states would necessitate a separate conception of legitimacy for GGIs. This would lead to ongoing confusion with multiple understandings of legitimacy and authority. Consequently, the right to rule, duty to obey conception is no longer useful. There should be only one general conception of legitimacy that assumes an account of authority that can be applied to all institutions involved in local, domestic and global governance.

The problem of the ‘duty to obey’

A further concern with the right to rule, duty to obey definition of legitimacy is that it characterises the subject as one who ‘obeys’. Such a characterisation limits the notion of the subject and misrepresents the way power operates between authorities and subjects. In reality subjects frequently respond to authority, rather than obey authority. As shown in the example of the IMF’s economic advice above, the IMF can influence the economic environment of people without the presence of a duty to obey. In such situations people respond to their changed environment. People respond (often unconsciously) to the exercise of authority by making decisions about their best options given the changes to their situation. Subjects do not have to obey an authority for their autonomy to be affected, just as authorities do not need to issue directives to exercise power.

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23 One objection to this line of argument may come from proceduralists who specifically focus on the way decisions are made. I address this issue in greater detail below.

24 Roughan, Authorities, 30.
Even the notion of the ‘subject’ of an authoritative directive is problematic at the international level. GGIs do not generally have ‘subjects’ in the traditional sense of nation states. For example, on the occasions where GGIs give directives, the primary recipients of the directives are member nation states, not people, and they are frequently located in multiple territories. This is a common characterisation of GGIs in international law. The International Court of Justice (ICJ), for example, defines an international organisation as ‘an entity established by agreement […] which has states as its principal members’. 25 Given this definition, states would be characterised as subjects of GGIs, to the extent that GGIs have ‘subjects’ at all. Conversely, states generally address their directives to citizens, businesses operating within the country and any individual residing or travelling within the country. Subjects of states are generally identifiable by asking the question, who is affected by the laws and decisions of the authority? Those affected tend to be located within a particular territory. 26 Importantly, while nation states are the principal members of GGIs and directly engage with them, for both GGIs and nation states, individual people within states are the ones who are affected by exercises of authority.

Theorists writing on international organisations sometimes use terms such as ‘addressees’ rather than ‘subjects’, 27 presumably to avoid the issues outlined above. Yet the notion of ‘addressee’ seems to presuppose some direct line from a GGI to the people receiving their advice or being influenced. A GGI must address the addressee. Generally, a GGI’s addressee is a member nation state. While this is an important form of authority to assess, there can be a separation between a GGI’s influence on a member state and the subsequent effects on citizens of that state. Moreover, GGIs can affect people’s lives in many ways, other than by addressing member states. In the example above, the IMF publishes research on a member’s economy. The Fund’s intended audience (its addressee) might be the member country, yet investors in other countries may act on the advice. In doing so, these third parties can change the economic conditions within the member country as well as their own, which can have significant impacts.

26 There are of course exceptions to this general rule. Trade laws are a clear example of where one country’s laws may affect people in other countries. Another example are laws with extra-territorial reach. For instance, privacy law in the European Union (EU), the *General Data Protection Regulation*, applies to entities anywhere in the world that collect the information of anyone based in the EU at the time of collection. See, ‘Privacy Business Resource 21: Australian Businesses and the EU General Data Protection Regulation’, Office of the Australian Information Commissioner, Australian Government, last modified June 2018, https://www.oaic.gov.au/agencies-and-organisations/business-resources/privacy-business-resource-21-australian-businesses-and-the-eu-general-data-protection-regulation
27 See for example, Macdonald and Macdonald, ‘Liquid Authority’. 
on individuals within many countries. For this reason, I generally use the terms ‘individuals’ or ‘people’ to capture those affected by GGI’s authority. It is GGI’s effects on real people and communities that I am most concerned with, rather than ‘subjects’, member states or ‘addressees’.

The reverse entailment problem

A further problem with the characterisation of legitimacy as entailing a duty to obey is that it leads to what Perry calls ‘the reverse entailment problem’. This term refers to a trend in the literature to establish or disprove an authority’s legitimacy by demonstrating the existence or absence of a duty to obey, understood as a moral duty, which entails a legal duty. Some, such as philosophical anarchists, deny the possibility of legitimate authority on the grounds that subjects can never have a content-independent duty to obey directives. This has led a number of theorists to attempt to indirectly establish the conditions of legitimacy by demonstrating the possibility of a duty to obey. However, as Perry insightfully illustrates, ‘… an obligation to obey does not logically entail the existence of legitimate authority’. It is possible for subjects to have an obligation to obey an authority without establishing that the authority is legitimate. Consider, for example, a violent and punitive authority that eases its violence when subjects obey its directives. In this situation subjects might agree with each other to obey the directives of the authority so that all might avoid the excesses of the authority’s violence. The agreement creates an obligation for the members to each other to obey the authority but does not legitimate the authority. This example demonstrates the importance of justifying authority directly, rather than establishing legitimacy indirectly through a duty to obey.

The right to rule, duty to obey conception of legitimacy was developed with states and legal systems in mind. Implicit in this conception in an understanding of authority that is limited to rule making and so limits the kinds of institutions that can be considered legitimate. The task then is to find a definition of legitimacy that can be applied to both states and GGI.

Buchanan’s Theory of Legitimacy

Allen Buchanan is a prominent theorist whose thinking began with an acceptance of the right to rule, duty to obey conception of legitimacy but has since moved away from it. The evolution of Buchanan’s

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28 Perry, ‘Political Authority and Political Obligation’, 5.
30 Perry, ‘Political Authority and Political Obligation’, 13.
thought in three works of the last ten years illustrates both the limitations of this account and the desirability of finding a general account of legitimacy that can be applied to both states and GGIs. In his influential paper, written with Robert Keohane, ‘The Legitimacy of Global Governance Institutions’, Buchanan adopts the right to rule, duty to obey definition but refrains from providing a detailed analysis of its meaning. Though Buchanan and Keohane acknowledge that GGIs do not perform the ‘full range of governmental functions’ which might be associated with ‘ruling’, they state that GGIs impose burdens and confer benefits. They further re-define ruling in the context of GGIs, away from the directives account outlined above, stating, ‘institutional agents are morally justified in making rules and attempting to secure compliance with them and that people subject to those rules have moral, content-independent reasons to follow them and/or not interfere with others’ compliance with them.’ Both the characterisation of GGIs as imposing burdens and benefits and the redefinition of ‘ruling’ are unreflective of the authority of GGIs, as Buchanan later acknowledges. As stated above, the political power of GGIs goes well beyond making rules, conferring burdens and conferring benefits. Further, the reasons to join many GGIs and comply with their rules are frequently prudential, not moral. It is not feasible for many small nations to trade outside the WTO, for example, even when many WTO rules may not operate in their favour. In this case small nations have a prudential, rather than moral reason to comply with the WTO.

Recognising some of these limitations, Buchanan further developed his theory in his chapter in The Philosophy of International Law (2010). This account has a number of advantages over the position taken in ‘The Legitimacy of Global Governance Institutions’, including the relaxation of the notion of coercion. Yet just as in Buchanan and Keohane’s older account, this chapter maintains a focus on ruling and an emphasis on the moral duty to comply, or at least not interfere, with an authority.

In this work Buchanan argues that the right to rule can have both a strong and a weak sense. The strong sense implies six assumptions that Buchanan sets out as follows:

32 Ibid., 407
33 Ibid., 411.
(a) the institution’s agents are morally justified in engaging in governance functions, including issuing rules and attaching costs and benefits to various agents to facilitate compliance with them (justified governance condition); (b) the institution’s agents are morally justified in using coercion to secure compliance with the institution’s rules (the justified coercion condition); (c) only the institution’s agents are morally justified in engaging in governance functions in the domain of action in question (the exclusive justification condition); (d) the institution’s agents are morally justified in using coercion to prevent others from attempting to engage in governance activities in its domain (the coercive exclusion condition); (e) those whom the institution attempts to govern have a content-independent moral obligation to comply with (all) the rules the institution imposes (the content-independent moral obligation condition)... (f) a similar obligation not to interfere with the institutions efforts to secure compliance with its rules.\textsuperscript{35}

Buchanan contends that this strong sense of the right to rule is too robust, stating ‘there is no reason to assume that only institutions that govern (rule) in this very strong sense can be said to be legitimate or illegitimate.’\textsuperscript{36} To counter the strong sense, Buchanan offers a weak sense of ruling as ‘being morally justified in issuing rules [“that prescribe duties for various actors”]\textsuperscript{37} and seeking to secure compliance with them through attaching costs to non-compliance and/or benefits to compliance.’\textsuperscript{38} Given this is a chapter in a book on international law, Buchanan’s focus on rules is unsurprising, yet it remains too narrow to capture the range of activities of GGI s.

A further problem with this account is Buchanan’s commitment to the content-independent requirement for practical support. He argues that there is a ‘crucial idea that the rules of a legitimate institution have a privileged status vis à vis our reasons for acting and that their having this privileged status is not dependent on their content.’\textsuperscript{39} It is a moral requirement, though he argues it may fall short of establishing a full obligation.\textsuperscript{40} This requirement characterises the subject as one who supports, or at least does not interfere with, an authority. This conception is subtler than the obeying subject, but nonetheless still fails

\textsuperscript{35} Ibid., 82
\textsuperscript{36} Ibid.
\textsuperscript{37} Ibid., 85.
\textsuperscript{38} Ibid., 83.
\textsuperscript{39} Ibid.
\textsuperscript{40} Ibid., 84.
to capture the responsive aspect of subjectivity, that is, the way individuals respond to changes in their circumstances that result from decisions of political authorities.

In his more recent work, *The Heart of Human Rights*, Buchanan moves even further away from the right to rule, duty to obey definition and develops what he calls an 'ecological view of legitimacy'. While his critiques of the right to rule definition of legitimacy in this work are pertinent, he is too vague on the subject matter he is discussing. In his general account of legitimacy, Buchanan mentions a range of institutions, including some UN institutions that 'merely produce documents that states are free to ratify or reject'. Buchanan’s inclusion of such an assertion weakens his argument. It is unclear if these institutions should be considered political/public authorities because if they ‘merely produce documents’ then they are unlikely to possess any real power and consequently are unlikely to affect the lives of ordinary people. Furthermore, it is not clear if Buchanan is actually concerned about the legitimacy of such institutions.

Despite, or perhaps because of, this ambiguity, Buchanan attempts to limit the domain of his study to those institutions that solve coordination problems to achieve important benefits, and those that ‘occupy the space of possibilities between being merely somewhat better than the noninstitutional alternative and being fully just or perfectly efficacious’. Despite these parameters Buchanan does not make it clear whether or not he is writing about political authority. This lack of clarity is important because, as discussed above, the notion of political legitimacy is intrinsically linked to authority. Legitimacy establishes when an authority is justified in affecting the lives of ordinary people and thus should exclude the kinds of institutions that merely produce documents. Including institutions that have no substantive ability to change anyone’s life undermines the significance of legitimacy assessments and confuses the very subject matter Buchanan is attempting to explicate.

Buchanan’s account searches for normative criteria that can be applied to a variety of institutions, to give them the ‘sort of standing that is necessary for [them] to have, if [they are] to do [their] job effectively.’ That is to say, for an institution to be legitimate it must meet reasonable criteria and this

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42 Ibid., 178.
43 Ibid., 179.
44 Ibid., 179.
must be ‘sufficiently apparent to enough people for the institution to enjoy the standing that is necessary for its well-functioning’. While aspects of this account appear to be descriptive (derive legitimacy from subjects’ beliefs), such as the requirement that people recognise/believe the institution meets valuable standards, this requirement is in fact instrumental. It places emphasis on the beliefs of subjects because it assumes that institutions need certain levels of public support to be effective. Buchanan’s explanation of why support is important opens more questions. Buchanan argues support is necessary to avoid excessive costs in terms of coercive enforcement. Yet this is not an argument in favour of the necessity of support, but rather the usefulness of support. Consequently, this requirement is not useful for understanding or assessing authority and legitimacy.

In summary, despite the progress Buchanan has made in clarifying the limitations of, and moving away from, the right to rule, duty to obey conception of legitimacy, his work does not yet provide a conception of legitimacy that holds a sufficiently broad account of public authority to enable us to interrogate the full range of GGI’s powers. Buchanan is not explicit enough about the subject of legitimacy and why we should care about it, nor does he provide an overarching standard to guide our assessments of authorities. Before moving on to discuss conceptions of legitimacy developed specifically for GGIs, I would like to address one other common state-centric conception of legitimacy.

**Coercion**

Just as legitimacy is sometimes understood to be normative and sometimes descriptive in the literature, it can also be categorised into those theories that seek to justify an authority’s power to change the normative situation of its subjects, and those, such as by John Rawls and Christopher Wellman, that seek to justify an authority’s use of coercion. Arthur Ripstein for example has argued that coercion is central for understanding state authority, while Buchanan argued in an early work that a monopoly on coercive power is a necessary condition of his democratic theory of legitimacy, stating ‘we need to know

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45 Ibid. Italics in the original.
46 Ibid., 179.
48 Perry, ‘Political Authority and Political Obligation’, 2.
when it is morally justified to use monopolistic coercion to impose public order’. These views follow Weber’s conception of the modern nation state as holding a monopoly on the legitimate use of violence.

Authority and coercion frequently co-exist, particularly in nation states. Some argue that the capacity to coerce is an inherent feature of political authority. If we take coercion to be central to the notion of authority, the question of legitimacy becomes, under what conditions is it legitimate for an authority to use coercion? This is certainly an important question. However, just as there are difficulties with adopting a directives-based account of authority, limiting notions of legitimacy to coercion is unhelpful for illuminating both the conception of authority generally and the legitimacy of GGIIs in particular.

Coercion can be conceptualised either strictly as the use of force or as a broader range of pressures, including economic coercion. If coercion is understood strictly as the use of force, and legitimacy is tied to justifications of coercion, we will be unable to assess the legitimacy of many GGIIs. With the exception of UN peacekeepers in some situations, states are the only authorities that have the capacity to use force. Consequently, most GGIIs would be excluded from legitimacy assessments. Their power would therefore be understood as either i) a special form of influence over countries and not as public authority, or ii) as illegitimate. This illustrates that placing the justification for the use of coercion (narrowly construed) as the central question of legitimacy can have significant ramifications for the types of authorities that can be said to have ‘political legitimacy’.

Alternatively, we can understand coercion to include many forms of pressure or compulsion, including economic coercion. This broader notion of coercion would admit many GGIIs to be considered as authorities and continue to allow for the connection between authority and coercion. However, this does not mean that coercion should be understood as the central feature of authority or its justification as the primary concern for political legitimacy. Instead, it is possible to characterise the capacity to coerce as a necessary condition for authorities’ efficacy. The justification for coercion would then be subsumed with the general justification for authority.

51 Max Weber, ‘Politics as Vocation’.
52 Ripstein, ‘Authority and Coercion’.
Furthermore, authority can be uncoupled from coercion. As Roughan argues, it is possible for an authority to be justified in using political power, but not justified in using coercion.\textsuperscript{53} Similarly it is conceivable that an authority could be justified in using force against a group of people and have the capacity to do so but not have authority over that group.\textsuperscript{54} Consider, for example, the 2003 US invasion of Iraq. However spurious, some argue that the US was justified in invading Iraq, and for the sake of argument, let us assume that it was. In this case the US was capable of using force but was not capable of establishing order. Hence the US was able (and arguably justified) to exercise a form of coercive power but was not able to establish political authority and consequently could not be considered legitimate. Consequently, the justification for an authority's use of coercion remains an important question but should not be the primary focus of the conception of legitimacy.

Authority and Legitimacy of Global Governance Institutions

In their widely cited edited work on global governance, Avant, Finnemore and Sell develop a conception of authority that is particular to GGIs. In this work Avant et. al completely move away from the account of authority implicit in the right to rule definition of legitimacy, namely the capacity to issues directives which act as content independent exclusionary reasons for action. They argue instead that authority should be understood as ‘the ability to induce deference in others’.\textsuperscript{55} On this account ‘deference confers power’.\textsuperscript{56} This power can be both obvious – it can make subjects do what they might not otherwise do – and subtler, for example by changing subjects’ preferences.\textsuperscript{57} Though this account of authority better captures the kinds of authority exercised by GGIs, it remains somewhat problematic.

The ability to induce deference in others is an account of authority that can be applied to many types of actors (not only nation states) and does not require a strong sense of ruling as issuing directives. However, while deference seems closer to accommodating the responsive aspect of subjectivity discussed above, it nonetheless maintains a level of intention and directedness on the part of the authority to the addressees. The notion of the ability to induce deference implies the authority has particular changes of preference in mind. Yet GGIs may not always have this capacity. They may be able

\textsuperscript{53} Roughan, \textit{Authorities}, 24.
\textsuperscript{54} Ibid., 24-25.
\textsuperscript{56} Ibid., 10.
\textsuperscript{57} Ibid.
to change the preferences of some people within their intended audience, but not necessarily in particular ways and may also unintentionally provide reasons for action for people outside their intended audience. As I will argue in greater detail below, it is more useful to conceptualise authority as the capacity to affect people’s lives, as this does not necessarily direct action but changes the situation in which actions can take place.

In a book chapter with Virginia Haufler, Avant explains her conception of legitimacy can be applied to a conception of legitimacy. She argues that an authority’s power (its ability to induce deference) is dependent upon the reasons followers have for deferring to the authority. She warns that if an authority’s actions do not align with ‘the basis on which [an authority’s] followers defer, the legitimacy of the authority may be questioned, and they may lose deference.’ In this case the subjects’ reasons for belief in the authority constrain the authority’s legitimacy. Yet this cannot explain whether the authority is justified in exercising authority or whether it simply enjoys the deference of followers. Followers’ reasons for deferring to a particular authority could vary widely and may be the result of circumstance, misinformation or history. A normative account would provide good reasons for justifying an authority, rather than any reason that followers happen to hold.

**Perry’s Account of Legitimacy**

One candidate conception of legitimacy, which can be applied to both states and GGIs alike, is Perry’s conception of legitimacy: ‘the ability of one person intentionally to change the normative situation of another, where it is sufficiently valuable or desirable that the first person possess such an ability with respect to the second.’ This account does not mischaracterise subjects and avoids the reverse entailment problem. It is both an instrumental, or benefit-based, account and a task-efficacy, or functionality, account of legitimacy. Here legitimacy rests upon i) the actual ability of an authority to intentionally change the normative situation of another (efficacy), and ii) the reason or value served by the authority holding that power (benefit-based). As an instrumental/benefit-based account of legitimacy (also known as ‘output’ legitimacy), there is no explicit appeal to democratic standards or justice. Authority is justified by the outputs or benefits it produces. However, as I will discuss in greater

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59 Perry, ‘Political Authority and Political Obligation’, 5.
detail in chapter II, this does not necessarily imply that democratic standards or principles of justice are unimportant. In fact, democratic standards and justice can and should be brought into this conception as a means to improve compliance and outcomes and to clarify what ends are sufficiently good to justify authority, as well as what is required to meet those ends.

Intentionality plays an important role in Perry’s conception of legitimacy. For Perry, the notion of a ‘moral power’ (which he takes a legitimate authority to be) entails that the person possessing the power *intends* to exercise that power *for* a particular good or value.º Perry takes a ‘focal meaning’ approach to the question of legitimacy, in that he aims to establish the ideal case of (legitimate) political authority and then describe defective instances of the case. As discussed above, I have taken the opposite approach, starting from a description of *de facto* authority and using this to determine the necessary conditions for a positive assessment of an authority’s legitimacy. While it would certainly be desirable if authorities only ever produce valuable outcomes that they intend, I adopt the pragmatic view that authorities cannot control all effects of their activities. As I discuss below, often authorities produce unintended outcomes, some of which are foreseeable and others unforeseeable. Consequently, though efficacy inherently presupposes some level of intentionality (it is hard to see how we could measure an institution’s efficacy in achieving certain outcomes if it did not intend to achieve those outcomes), it is nevertheless important to assess an authority’s legitimacy based on both its intended and unintended outcomes. For these reasons I do not adopt the ‘internationality’ aspect of Perry’s conception.

In the remainder of this chapter I explore and defend Perry’s account of legitimacy. I contend Perry’s explicitly functionalist and instrumental or ‘output’ account of legitimacy is preferable to teleological or ‘input’ accounts. I further highlight the advantages of this particular definition of legitimacy in relation to our understanding of authority, arguing this provides a more useful definition of authority that can be applied to all forms of political/public authority than the accounts discussed earlier in this chapter. I end by suggesting one further minor modification to Perry’s account.

ºº At note 46, Perry writes, ‘whatever else we might want to say about political authority, surely its ultimate point is precisely to allow one person intentionally to change the normative situation of another, where it is valuable that the former person have such a capacity with respect to the latter person.’ This is clearly central case analysis. For a discussion on central case analysis, or ‘focal meaning’, see John Finnis, *Natural Law and Natural Right*, 2nd edition, (Oxford: Oxford University Press, 2011), 9-11.
Perry’s conception of legitimacy has many instructive aspects for assessing the justification of both nation states’ and GGl’s authority. One benefit of Perry’s account is that it is a task-efficacy, or functionality, account. Functionality accounts assess the legitimacy of an authority against its efficacy in fulfilling the functions it is designed to fulfil. The functions of public authorities, particularly international organisations, are generally set out in the institution’s founding documents. In the case of the IMF, its purposes are explicitly stated in Article I of the Articles of Agreement. Functionality approaches thus direct us to consider the IMF’s legitimacy in relation to its efficacy in fulfilling the roles set out in Article I.

These accounts have the benefit of aligning with international legal norms. Since at least the mid-20th century, international legal norms have taken a functionality approach to assessing the legitimate actions of GGl, limiting the scope of an international organisation’s legitimacy to the domains established in its founding documents. The ICJ confirmed this principle in 1949, when it determined that ‘the rights and duties of an entity such as an Organization [as opposed to a nation state] must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.’ This finding limits the legitimate functions of an international organisation to the domain specified in its founding document, and to those tasks necessary to achieve its ends. The principle was reaffirmed by the ICJ in 1996, when it found that the European Commission, as an international organisation and not a state, only had the right to act within the domain of the particular functions given it by its founding document. Thus, an account of legitimacy that ties public authority’s legitimacy to its functions is better aligned with real world political practice than accounts that do not.

A further advantage of Perry’s conception of legitimacy is that it is an instrumental or benefit-based account, as opposed to a deontological account, ‘input’ account or ‘justification to subjects’. That is, Perry’s account justifies an authority’s use of power by the outcomes it produces, rather than through appeals to, for example, universal standards of justice or principles of democracy. Instrumental accounts of legitimacy are intuitively appealing. All international governance institutions have been formed with the purpose of fulfilling some good or end that cannot be achieved by states acting alone, while authority more generally can also be seen as fulfilling an instrumental function. As Joseph Raz puts it, ‘given the

64 Roughan, Authorities, 31.
prevailing circumstance of human life, human well-being can best be achieved in communities subject to political authority.\(^{65}\) Public authority is therefore reasonably seen as instrumental to some other good or end, and it is the instrumental nature of public authority that makes instrumental, and indeed functionality, accounts of legitimacy so intuitively appealing.\(^{66}\)

Deontological, or ‘input’ accounts of legitimacy, can also be intuitively appealing to those brought up in Western liberal democracies. Such accounts generally justify authority by appeal to how the authority operates and whether it observes certain fundamental standards, such as justice and respect for human rights. Input legitimacy is similar to fair procedure accounts that focus on how decisions are made, whether they are democratic or have sufficient involvement from stakeholders. Input legitimacy can also be understood as what Roughan calls ‘justifications to the subject’.\(^{67}\) Justifications to the subject assume legitimacy can only be achieved with the involvement of the subject in the justification process. Examples of justifications to the subject include consent theories and fair procedure theories that involve the subject in decision-making through, for instance, democratic elections. These accounts tend to be promulgated by political liberals and generally prioritise respect for individual liberty over other possible goods. This is because many, if not all, liberals assume that public authorities are ‘characterized by reasonable disagreement about what their proper goals are and what standards of justice they should meet.’\(^{68}\) Consequently, some argue, if there are at least fair procedures (or ‘inputs’), which involve subjects in the decision-making process, subjects will be able to accept outcomes, whether they agree with them or not.\(^{69}\)

As intuitive and indeed desirable as input accounts of legitimacy may be, they can lead to perverse outcomes. Subjects’ preferences in decision making processes can be influenced by adaptation to harmful situations or because they have insufficient information to make an informed decision.\(^{70}\)

Furthermore, such accounts do not sufficiently acknowledge the descriptive fact that all public


\(^{66}\) This is not to exclude the possibility that public authority has some inherent value; it is only to say that public authority is always at least partially instrumental.

\(^{67}\) Roughan, *Authorities*, 30.


authorities produce outcomes, whether they are explicit or not and whether they are intended or not, and it is the outcomes of institutions that have the largest effect on subjects’ lives. The prioritisation of individual liberty in the liberal tradition has thus led to an avoidance of discussion of ends and an over-emphasis on subjects’ preferences. An instrumental account of legitimacy can overcome this historical imbalance, by bringing instrumental aspects back into the discussion of legitimacy.

Perry re-focuses on ends by emphasising the value served by the exercise of authority. This also enables Perry to avoid the reverse entailment problem. Perry’s account justifies authority by requiring that it serve ‘sufficiently valuable or desirable’ ends. This is a direct justification for authority and means that even when an authority is effective in achieving its ends, it will not be legitimate unless those ends are sufficiently valuable or desirable. I will discuss what could constitute sufficiently valuable or desirable ends in greater details in chapter 2. For now, to illustrate this point, consider a GGI whose founding document establishes that its purpose is to alleviate poverty, compared to one that is established to subjugate people with blonde hair. The goal of alleviating poverty, many would agree, is a worthy end, which could justify its use of public authority and the corresponding limits on the autonomy of individuals affected by the authority’s decisions. However, on Perry’s definition, the organisation would be justified in exercising public authority only if it were also in fact effective in alleviating poverty – it is not enough to be well intentioned. On the other hand, the aim of subjugating blondes is clearly not a sufficiently good end to justify the second organisation’s use of power, regardless of its efficacy in achieving this end. As all public authorities, including state and non-state actors, have particular ends and fulfil particular functions, the value of which can be assessed, justifications of this kind can be applied to all authorities. The functionality aspect of the conception ensures that authorities not only aim at sufficiently valuable ends but that they also achieve those ends.

Perry’s conception of legitimacy implicitly provides a descriptive definition of de facto authority – namely, the ability to change the normative situation of another.71 This account of authority is consistent with the literature.72 Moreover, on a broad reading of ‘normative situation’, this definition can be applied

71 As discussed above, I have excluded the ‘intentionality’ aspect of Perry’s account.
to all authorities, particularly when supplemented by Roughan’s account of public authority discussed in the introduction. However, the applicability of this definition of authority to GGI s depends upon our understanding of ‘normative situation’.

The meaning of changing another’s ‘normative situation’ can be taken either narrowly as referring to Hohfeldian incidents or more broadly as providing subjects with moral or prudential reasons for action.73 Taken narrowly, changing someone’s normative situation involves the capacity to distribute rights and duties, such as the Hohfeldian incidents of privileges/liberties, claims, powers and immunities.74 Authority understood in this way is binding. Both states and many GGI s distribute Hohfeldian incidences. For example, the IMF has the capacity to distribute voting rights and drawing rights (liberties) among its members, as well as the capacity to distribute duties to pay membership fees and interest rates on loans (claims). The IMF also has the power to change the rights and duties of members. Though the IMF lacks physical coercive capacity, its liberties and claims are nonetheless legally binding on members. This is a largely legalistic understanding of authority and consequently excludes many GGI s that do not distribute Hohfeldian incidences. Nor does this definition of authority capture the full range of work undertaken by GGI s that have real impacts on the lives of ordinary people.

A broader understanding of changing someone’s normative situation is that it provides subjects with moral and/or prudential reasons for action. These reasons are not necessarily binding but affect what subjects ought to do in a given situation. As Perry concedes, changing a subject’s normative situation is not an exhaustive account of the work of public authorities.75 Public authorities may also have the power to change, for example, the material, spatial, and security situations of subjects and may be involved in public education or engage with other public authorities. Each of these powers and actions can be seen to have an effect on subjects’ particular situations and consequently can be seen, very broadly, as affecting or changing subjects’ reasons for action.

73 Political authorities can change the normative situation of their subjects in a number of ways, for example through the use of coercion (if you drive at 70 kilometres per hour in a 60 zone, you will receive a fine and if you do not pay the fine you can be forcibly put in jail, so if you don’t want to pay a fine or go to jail, you should stick to the speed limit.
75 Perry, ‘Political Authority’, 2.
This broad understanding of normative situation, however, is contested. Raz explicitly rejects the broad notion of changing subjects’ normative situation by defending the right to rule and duty to obey definition of legitimacy. In doing so Raz argues that authority is a special case where the right to rule entails a right to command, ‘not only to affect the circumstances that shape our opportunities and the obstacles on our path’. Raz does not provide an explanation for why he would exclude the ability to affect others’ circumstances from an account of authority. Perhaps it is because including those sorts of powers would expand the definition of authority too broadly so that it would include almost all bodies, including corporations and even other individuals. Raz states that ‘we are affected by others and the actions of other in innumerable ways. But the case of authority is special’. The case of authority, or more precisely political authority, is indeed special and it is useful to identify the characteristics that make it special. However, simply tying authority to directives that give subjects content independent, exclusionary reasons for action, as Raz does, is insufficient and unhelpful for explaining, understanding or justifying the way governance occurs at the international level in the modern world. Instead, because the authority exercised by GGIs is rapidly evolving, it is more useful to set very broad parameters around the actions of authorities (i.e. changing the normative situation of subjects) and narrow the kinds of institutions that can be seen as political authorities to those institutions identified by Roughan’s four criteria, outlined in the introduction. Such an approach would exclude institutions and individuals that are not involved in governing, while enabling us to consider the various activities of both GGIs and states.

The capacity to change the normative situation of another (understood in the broad sense) is a more useful definition of de facto authority than those mentioned above because it can be applied to all forms of political authority including nation states and GGIs. GGIs can affect people’s normative situations in a number of ways, both deliberately and through unintended, though arguably foreseeable consequences. For example, a GGI, such as the WTO, could work with member states to establish new trade regulations. These regulations affect people’s access to markets and thus provide them with new reasons for action and consequently change how they ought to trade goods. Yet authorities need not directly provide people with reasons for action to affect their normative situation. As discussed above, the IMF frequently exercises authority by providing information to governments and markets. This affects people’s normative situation indirectly because, by providing information to markets on the growth prospects of

77 Ibid., 135.
a member state, the IMF gives market operators reasons to invest or not invest in the member state. This in turn changes the normative situation of citizens within the member state by opening or limiting their economic activity, which can have significant consequences for the lives of ordinary citizens. By changing the definition of de facto authority to the capacity to intentionally change the normative situation of another, it is possible to assess the legitimacy of a greater variety of activities that have real implications for people’s lives, but that would otherwise be excluded from the ‘ruling’ notion of authority.

It is important to note that the IMF activity outlined above does not provide subjects with i) a directive, ii) a content-independent reason for action, or iii) an exclusionary reason for action. Instead, subjects respond to the content of the information issued by the IMF. The IMF intends that member states respond to its information but cannot bind them to respond. The level of response – i.e. how effectively the IMF changes people’s normative situation – depends on how useful or accurate the information is and how useful or accurate its advice has been historically. Though this form of activity provides content-dependent, non-exclusionary reasons for action, and does so by providing information rather binding directives, this sort of activity both meets each of Roughan’s four criteria for public authority (the IMF is an institution; its Articles of Agreement are public; its connection with its subjects are impersonal; and it interacts on a formal basis with other public authorities) and has very real consequences for individuals. Consequently, this form of activity is properly understood as a form of public authority. It is also important to note that ‘ruling’ in the sense outlined above, is captured by Perry’s definition of de facto authority. Thus, Perry’s conception of legitimacy, supplemented by Roughan’s account of public authority, is more useful than the right to rule and duty to obey definition, because it assumes an account of authority that is sufficiently broad to capture and reflect the various ways in which nation states and GGIs exercise public authority in the modern world.

To avoid any confusion about the legal aspects of Hohfeldian powers, I modify Perry’s definition as follows: political legitimacy refers to the capacity of political/public authorities to affect the lives of others within a relevant jurisdiction, where there is sufficient reason for, or value in, the authority having that capacity. I included jurisdiction to ensure some level of external limit on the exercise of public authority.\(^7\) This limit is important because it is possible to imagine a public authority, say a national government, that is completely internally legitimate. The authority is justified to its citizens, yet it decides to unjustly

\(^7\) Buchanan calls this a ‘minimal external justice condition’. See Buchanan, *Justice, Legitimacy, and Self-Determination*, 270.
invade another country. In this case, without some jurisdictional limit, we would struggle to tie the government’s legitimacy to its relations with other countries. By including the jurisdiction clause, it is possible to state that invasions of other countries are illegitimate (unless permitted by international law) and that GGIs should only act within their specialisation.\textsuperscript{79}

To summarise, under this definition of legitimacy, a GGI would be legitimate when it has the capacity to affect the lives of people under its authority and within its jurisdiction,\textsuperscript{80} where there is sufficient reason or value in the authority holding that capacity. At its most basic level, this conception holds that an authority is legitimate when it has the power to affect people within its jurisdiction, and there is value in it holding that power. The capacity aspect of this definition makes this a functionality, or task-efficacy, account of legitimacy. Here capacity refers to how effectively an authority achieves its goals, both stated and implicit. In the case of GGIs, the goal or purpose of the organisation is usually set out in the founding documents. A GGI’s consistent failure to fulfil its roles would indicate it lacks some necessary capacity, which undermines its legitimacy. The capacity to influence is generally a key component of an authority’s efficacy in achieving its goals. An authority is likely to be effective in influencing when its rules, directives or suggestions are supported by legal or coercive power. Yet coercion and the capacity to issue directives in the legal sense are not the only ways through which an authority can be influential. A GGI can be influential when it is well respected, perceived to have expertise in a particular area in which stakeholders have less knowledge or when it is perceived to be ‘legitimate’.\textsuperscript{81}

The notion of \textit{sufficient reason or value} in an authority having the capacity to affect people’s lives indicates that there must be a reason for the institution to exist, and this reason should be ‘sufficiently valuable’. That is, the institution must fulfil a particular role (or roles) that currently is either not fulfilled by any other institution or not adequately fulfilled by another institution or group of institutions. The particular role(s) might include solving a coordination problem, a collective action problem, or improving people’s lives in some way significant way. The problem the institution is designed to solve must be ‘sufficiently’

\textsuperscript{79} I do not refer to this clause throughout the remainder of this thesis as I focus exclusively on GGIs. As I discuss in the following chapter, there are principles of international law that require GGIs to act only within their specialization and so this clause is implicit in assessing their legitimacy.

\textsuperscript{80} The phrase ‘under its authority’ is not intended to entail a hierarchical relationship between authority and people. Instead it is a short-hand way of capturing all people who are affected by the decisions of GGIs. This will include people living with GGIs’ member states and those who have an interest in, or are affected by, the authority’s area of specialisation.

\textsuperscript{81} Avant et al. \textit{Who Governs the Globe}, 1 – 32.
problematic to justify the costs of the institution. Sometimes these costs will be monetary; often the costs will involve governments and individuals giving up some sovereignty. Solving these problems must create a sufficient amount of 'good' or value without simultaneously creating harm for others. The notion of sufficiency also indicates that the institution does not have to be perfect – it merely has to be sufficient on the balance of things within its political, economic and historical context.

This account of legitimacy naturally leads to two questions: i) What constitutes sufficiently good ends that could justify an authority’s ability to change the normative situation of its subjects and ii) how can we judge whether an authority is effective in achieving these ends? These are questions of the standard of legitimacy. In the following chapter I seek to offer answers to these questions.
Chapter II – Normative Grounds of Legitimacy

Aim your bow high, knowing the force of gravity will make your arrow fall

Machiavelli, The Prince

In the previous chapter I argued that a global governance institution (GGI) is legitimate when it has the capacity to affect the lives of people under its authority where there is sufficient reason for or value in the authority having that capacity. This account of legitimacy requires the authority to be able to effectively fulfil its functions and be justified in terms of sufficient reason and value. The approach is instrumental, resting on the commonly held belief that political authorities enable us to achieve desirable ends that we cannot achieve on our own.¹ On the account defended in chapter 1, therefore, it is because political authorities enable us to achieve certain desirable ends that it is reasonable to see authority as instrumental to those ends.² If we accept that political authority is instrumental, we must ask: what end does it serve?

There are innumerable answers to what good or end political authority should serve. Some argue it is justice, others that it is democracy, others still that it is utility maximisation. For an authority to be legitimate on the conception established in chapter 1, the good or end authority serves must be sufficiently good to act as the normative grounds of legitimacy. In this chapter I contend that effectively promoting the necessary enabling conditions for human wellbeing (or human flourishing)³ is a sufficiently good end to act as the normative ground to justify GGI’s authority. As I will discuss below, within this account there is an important distinction between promoting the necessary enabling conditions for wellbeing and actual wellbeing itself. Drawing on recent research in positive psychology and sociology, I argue there are a number of common features which can indicate that people are flourishing. However, these features can manifest in different people’s lives in myriad ways and so there is no single good life. Given this fact, authorities should not attempt to promote one or a limited number of good lives, nor should they attempt to force people to flourish. Individual choice and autonomy are important elements

² This is not to exclude the possibility that public authority has some inherent value; it is only to say that public authority is always at least partially instrumental.
³ I do not distinguish between human flourishing and human wellbeing.
to flourishing and so if an authority were to attempt to force people to flourish, it would likely prevent this outcome. Nevertheless, there may be some necessary enabling conditions which give people the opportunity to flourish. Under this approach, these conditions would be objective and universal.

The chapter begins by situating this approach within some of the most influential theories of legitimacy, including utilitarianism, Rawls’ theory of justice as fairness, Allen Buchanan’s account of standards of the legitimacy of GGIs and common good theories. After discussing some challenges in using these theories to justify GGIs’ authority, I draw on the ‘goodness’ aspect of the common good tradition, which focuses on an objective approach to human wellbeing, to consider how the necessary conditions for human flourishing could justify authority. To provide content to what the enabling conditions might be, I examine the capabilities approach and Martha Nussbaum’s account of the ten central capabilities, which she argues are necessary for a life worthy of human dignity. Despite its flaws, Nussbaum’s list of ten capabilities provides a foundation upon which we can debate whether there could be universal conditions for human flourishing, what they might be and the role of GGIs in promoting these conditions.

The approach has the further advantage of distinguishing between the enabling conditions for wellbeing and actual wellbeing, and allows us to measure an authority’s efficacy in promoting wellbeing, as demonstrated by the human development index. While acknowledging the extensive critiques of Nussbaum’s arguments, I contend that the theoretical framework of the capabilities approach provides an account of the enabling conditions for wellbeing that is sufficiently general to be of cross-cultural value and to maintain respect for individual choice and cultural differences between nations. This contention leads me to conclude that it is possible to use the promotion of the conditions for human flourishing as the normative grounds of legitimacy, if we use Nussbaum ten capabilities as a proxy for the necessary conditions for flourishing. The approach is intended to assess the legitimacy of GGIs in general, considering their entire body of work. The approach is not intended to be applied to individual policies, though in some instances it may be possible. For the sake of brevity, I often use the term, ‘promote wellbeing’, where I mean promote the necessary enabling conditions for human wellbeing. Where the distinction is important I make my meaning clear.


5 For a discussion on the relationship between the Human Development Index and the capabilities approach, see Martha Nussbaum, ‘Public Philosophy and International Feminism’ *Ethics* 108 (1998): 762-796.
Alternative Ends

The definition of legitimacy in chapter 1 leads us to consider what end(s) could be sufficiently good to act as the normative grounds of a GGI’s authority. In this section I situate my response to this question within some of the most dominant theories in the literature. These include utilitarianism, Rawls’ theory of justice, Buchanan’s standards of legitimacy, and notions of the common good. To situate my normative standards in relation to these accounts, I provide an overview of each account and explore some of the challenges of applying these to GGIs.

Utilitarianism

Utilitarianism is an instrumental theory that seeks to justify authority by promoting the greatest good for the greatest number. Despite its influence on modern economic theory, utilitarianism has been heavily criticised for potentially justifying the tyranny of the majority over the minority and for failing to respect basic standards of human rights. It is nevertheless worthwhile to uncover some of the assumptions underpinning this theory and consider some variations in utilitarian thought.

Modern utilitarianism is premised on the assumptions that humans, by nature, seek pleasure and avoid pain. It is this assumption that drives the utilitarian notion of ‘the good’. Jeremy Bentham (1748-1832) was one of the earliest and strongest proponents of utilitarianism. He argued that it is pain and pleasure alone that will ‘point out what we ought to do, as well as to determine what we shall do.’ Thus the greatest ‘good’ becomes synonymous with the greatest pleasure. An important implication of this account is that humans are not able to reason after the good. Instead, ‘every effort we can make to throw off our subjection [to pleasure and pain] will serve but to demonstrate and confirm [our subjugation].’

Thus the good is defined subjectively by each individual’s perception of what is pleasurable to her. As each person goes about trying to maximise her own good there will be conflict. The role of authority is to coordinate these activities to facilitate the greatest good for the greatest number. Bentham’s student, John Stuart Mill, elaborated the role of authority in utilitarianism with reference to the harm principle. This principle holds that ‘the only purpose for which power can rightfully be exercised over any member

7 Ibid.
8 Ibid.
of a civilised community, against his will, is to prevent harm to others.’

This is because ‘over himself, over his own mind, the individual is sovereign.’

This position leads to a very strong notion of individual freedom and a very narrow domain of activity for legitimate authority.

Does utilitarianism – understood as the greatest pleasure (defined subjectively) for the greatest number – present a sufficiently valuable end to justify the authority of GGIs? It is true that utilitarianism has some useful features for standards against which to measure a GGI’s legitimacy. Utilitarianism is an explicitly instrumental account, which suits the instrumental nature of GGIs. Utilitarianisms’ close relationship with economics makes it relatively easy to measure certain understandings of utility, especially if we understand utility as capacity and willingness to spend. Finally, utilitarianism prioritises individual preferences, which enable it to avoid charges of paternalism.

However, utilitarianism also has a number of undesirable features for normative standards of legitimacy. As stated above, utilitarianism holds a firm position against our ability to reason after higher and lower pleasures. This is problematic as some people may take pleasure in base or sadistic activities or may be wrong about what will bring them the greatest pleasure, prioritising, for example, the present over the future. This may lead to perverse outcomes. Yet utilitarianism does not allow that reasoning can assist in solving such problems. Utilitarianism can also be used to justify the tyranny of the majority over the minority. At the international level utilitarianism could justify the prioritisation of highly populous nations over smaller nations, in the interests of maximising global utility. Such an approach fails to recognise the inherent value of all individuals, regardless of how populous their country happens to be.

One response may come from Mill, who attempted to argue that protecting individual rights would ultimately lead to the greatest good for the greatest number. Yet this seems like an objective, rather than subjective assessment of the good. Some people may not recognise the universal value of human rights. If that is the case, Mills’ argument must appeal to the facts of the matter to inform political decision making about human rights, rather than allowing political decisions to be determined by people’s subjective preferences.

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10 Ibid.

11 The prioritisation of immediate desire-fulfilment over long-term goods has contributed to increasing rates of obesity globally, for example.

12 The overview of utilitarianism I have provided here is very basic. For a more detailed discussion of this issue within the utilitarian canon see, Charles Jones, *Global Justice: Defending Cosmopolitanism* (Oxford: Oxford University Press, 2001), esp. chapter 2, ‘Utilitarianism and Global Justice’.
preferences. Consequently Mills’ approach seems to cease to be a genuinely utilitarian theory. It is for these reasons that it is unclear if utilitarianism is a sufficiently good or valuable end to justify authority.

**Rawlsian Social Justice**

The effective promotion of social justice is another good that could be used to justify political authority. While there have been innumerable accounts of social justice, the most influential account of the 20th century is John Rawls’ theory of justice as fairness. While Rawls does not place his theory of justice within the context of legitimacy, arguing instead that the standards of social justice are more demanding than legitimacy, it is nevertheless possible to use the promotion of social justice as an end of, and justification for, political authority. In this section I outline Rawls’ account of social justice and consider its applicability to questions of legitimacy for GGIs.

Justice as fairness aims to establish a ‘political conception of justice’, whereby the underlying principles establish a fair political system within which individuals can advance their highest-order interests. The principles assign ‘rights and duties in the basic institutions of society and... define the appropriate distribution of the benefits and burdens of social cooperation’. For principles to be ‘political’ they should be value-neutral in relation to the good or any particular way of life, because, in Rawls’ view, there is reasonable disagreement about the good. That is, it is reasonable for citizens to hold conflicting moral, religious and philosophical doctrines, which Rawls calls ‘comprehensive moral doctrines’. Because he believes that there is reasonable disagreement about the good, Rawls aims to establish principles of justice that can accord with any reasonable comprehensive doctrine. The principles are based on the following assumptions: all people are born equal, are of equal worth and therefore should have equal liberty. While some, due to luck, are born with ‘natural talents and abilities’, these are ‘arbitrary from a

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34 Allen Buchanan, for example, holds this position, arguing the ‘chief moral purpose of endowing an entity with political power is to achieve justice.’ Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press 2004), 247.
38 Comprehensive moral doctrines establish ‘ideals of personal character... friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole.’ Rawls, *Political Liberalism*, 13. This means a comprehensive doctrine holds a view of the good life, which informs our social interactions, the structure of society, the design of political institutions and political policy.
moral point of view’, and are not morally deserved from the perspective of justice. Additionally, because all people possess the same inherent value, each person must be treated as an end in herself, as inviolable, and is free to determine for herself her own sense of the good. Individual rights therefore cannot be overridden by concerns for the welfare of society or the dictates of any comprehensive moral doctrine. Put another way, Rawls prioritises the right over the good.

To arrive at his principles of justice, Rawls asks: under what conditions would anyone, ‘as reasonable and rational... in the light of their common human reason’ consent to have her liberty constrained? He believes we would only consent to give up some of our liberty if it were to our advantage. To show this, Rawls creates a hypothetical situation in which subjects are placed in the ‘original position’ behind the ‘veil of ignorance’. In this thought experiment the subjects are not yet born. They do not know anything about the people they will be – their race, religion, gender, social status, and so forth. Rawls denies his hypothetical subjects any knowledge of ‘their conceptions of the good’, though he simultaneously assumes that they are capable of ‘a sense of justice’. To ensure the outcomes are to their advantage, Rawls leaves his subjects ‘concerned to further their own interests’. The subjects then determine which laws they would agree to behind the veil.

On this basis Rawls establishes the following principles of justice:

(1) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

(2) Social and economic inequalities are to be arranged so that they are both:
   a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
   b) attached to offices and positions open to all under conditions of fair equality of opportunity.

19 Rawls, A Theory of Justice, 72.
20 Ibid., 3.
21 Ibid.
22 Ibid., 41.
23 Ibid., 47.
24 Ibid.
25 Ibid., 302.
Once these principles are established, individuals can pursue their own good to the extent that this pursuit does violate the principles of justice.\(^{26}\) Thus, while Rawls differs significantly from utilitarians in refusing to sacrifice any individual for the greater good, he accepts the utilitarian position, as Allan Bloom points out, ‘that each individual's view of his good is his good and that it is the business of society... not to propose or impose a view of the good on the individual’.\(^{27}\) That is, Rawls accepts the modern liberal premise of value pluralism. However, as Rawls develops his theory, he argues that in order to further everyone’s interests and maintain stability in a plural just society, people would recognise the need for some basic goods or resources for all, which would enable everyone to pursue her own life plan. The list of goods consists of basic rights, liberties and opportunities, income and wealth and the social bases of self-respect and form the basis of a ‘social minimum’, which governments must secure for their people.\(^{28}\) Initially Rawls said these goods were desirable no matter what else one wanted in life.\(^{29}\) However, in his revised edition of *A Theory of Justice* Rawls stated that the primary goods are better understood as ‘what persons need in their status as free and equal citizens, and as normal and fully cooperating members of society over a complete life.’\(^{30}\)

Can Rawls’ theory of justice as fairness be used to assess GGI’s legitimacy? To be fair to Rawls it is important to note that it was never his intention for his theory to be used in this way. Consequently and unsurprisingly, there are a number of reasons why this is not the most desirable way to measure a GGI’s legitimacy. Some of these reasons relate to internal issues with Rawls’ arguments and assumptions, others to the difficulty of applying his theory to GGI’s.

One commonly identified problem with Rawls’ account is that he seems to attempt to build a moral theory from non-moral grounds. Rawls divorces the notions of the right and the good in his original position by denying his hypothetical subjects any idea of the good. Despite this divorce, Rawls assumes the subjects are capable of ‘a sense of justice’,\(^{31}\) which must rest exclusively on the right. Precisely how a subject could have a sense of justice without any conception of the good is not clear, especially as Rawls

\(^{26}\) Ibid., 81.
\(^{29}\) Ibid., 92.
\(^{30}\) Ibid., viii.
\(^{31}\) Ibid., 47.
acknowledges the strong relationship between the right and the good.32 Because the subject is emptied of her own conception of the good, she is left with Rawls’ own assumptions. Rawls states that in his account of justice as fairness, ‘persons accept in advance a principle of equal liberty.’33 As Nelson points out, the original position thus presupposes at least one primary good.34 Rawls also builds much on this notion of a political conception of justice, which is constituted of ‘certain fundamental ideas seen as implicit in the public political culture of a democratic society.’35 However he does so without justification or critical examination of the ‘rightness’ of those fundamental ideas. As Bloom puts it, Rawls’ ‘principles depend on our moral sense and that moral sense on the principles.’36 Rawls does not acknowledge that while these ideas may be commonly known, they may not be commonly supported, even within the societies he is concerned with. Given these issues it is judicious to question whether Rawls’ hypothetical subjects are genuinely reasonable or moral. It seems prudent to be cautious about adopting a moral theory built on such foundations.

Moreover, a number of theorists, including some who support his overall approach, have critiqued Rawls’ conception of primary goods. For Rawls the primary goods are universally necessary enabling resources that allow people the freedom to pursue their own version of the good. Remembering that Rawls is concerned with equality, or inequality to the extent that it helps the least well-off people in society, the primary goods enable us to make interpersonal comparisons. This approach is sometimes known as resourcism.37 However, theorists such as Amartya Sen,38 Martha Nussbaum39 and Sandrine Berges40 have pointed out that if we are really concerned with equal freedom for all, we should focus on what people are actually able to do and be with the resources they have. Because people have differing capacities to

32 Rawls, Political Liberalism, 173. For further discussion on this point, see Alastair MacIntyre, After Virtue, (Notre Dame, Ind: Notre Dame Press, 1981); and Michael Sandel, Liberalism and the Limits of Justice, (Cambridge UK: Cambridge University Press, 1982).
39 See for example, Martha Nussbaum, Frontiers of Justice: Disability, Nationality, Species Membership (Cambridge MA: Harvard University Press, 2006).
convert resources into functioning due to natural and arbitrary differences, Rawls’ focus on resources rather than capability ‘introduces elements of arbitrariness’ into his account. Just as the primary goods do not allow for people’s differing capacity to convert those primary goods into functioning, they also do not allow for variations in need across a human life. We are not born self-sufficient and we go through periods of needing more and fewer resources, for example an adolescent male during a growth spurt will need more resources to sustain his health. Unless the social minimum of primary goods is adjusted for each individual on the basis of actual need, Rawls’ justice as fairness will maintain those inequalities that result from the morally arbitrary ‘natural lottery’.

Aside from these issues inherent within the theory, applying justice as fairness to GGIs would be difficult because it was specifically developed sovereign nation states that start ‘from within a certain political tradition’ and much of the ‘content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society.’ The international order and many of the member states of GGIs do not subscribe to that political tradition. The notion of overlapping consensus is difficult enough when applied within a single society. It is potentially impossible between nation states.

A further concern with this approach is that it places promoting the conditions for social justice as the central priority of political authority and consequently ignores or rejects other important functions. To be fair, Rawls did not intend that his theory be used as a telos to legitimise political institutions. Instead justice as fairness focuses on the fair distribution of benefits and burdens, stability and maintaining value pluralism. While these are certainly crucial areas for political authorities, it is not their only role, nor arguably their most important. In some ways the theory is not very ambitious: it aims at a social minimum, when, as the quote at the start of this chapter indicates, it is important to set our aims high since, though we may never achieve our highest aspirations, the attempt may get us closer than if we aim low and still miss. Martha Nussbaum captures this point when she states that we should not be satisfied with ‘mere bare humanness.’ Rather, she argues, we should ‘specify a life in which fully human functioning, or a kind of basic human flourishing, will be available. For we do not want politics to take mere survival as its goal: we want to describe a life in which the dignity of the human being is not violated

\[^{42}\] John Rawls, Political Liberalism, 13-14.
by hunger or fear or the absence of opportunity.’ If we seek an account of legitimacy that can provide a more robust understanding of equity between people that can accommodate their various capacities and aims at flourishing instead of mere survival, we must look beyond Rawls to more substantive notions of the good.

The two accounts discussed so far prioritise individual autonomy, or the right of individuals to choose their own conception of the good. Freedom and autonomy are the most important values in these accounts. To prioritise autonomy requires institutions to be value-neutral in relation to the good. So long as individuals observe the harm principle – that all are free to pursue their interests to the extent that it does not harm another’s pursuit of their interests – there is no judgement placed on what individuals pursue and no particular pursuits are encouraged over others. An alternative approach is to hold a more ‘objective’ notion of the good. This requires acknowledgement of the controversial claim that individuals do not always know what is good for them (possibly due to insufficient or misinformation) or may not always act on what is good for them (for example, by prioritising short-term desires over long-term goals). Before exploring such accounts, it is instructive to consider a teleological conception of legitimacy that was specifically designed to address the legitimacy of GGIs.

Buchanan and the Legitimacy of Global Governance Institutions

Allen Buchanan is an influential theorist of the legitimacy of GGIs who holds a teleological view of their role. He argues that an institution is legitimate ‘if and only if the benefits of empowering it outweigh the risks of doing so.’ For a GGI to be legitimate it must meet five standards:

1. Comparative benefit: the institution provides significantly better benefits than the noninstitutional alternative.
2. Institutional integrity: there is not a large disparity between the institution’s most important professed goals... and its actual performance...
3. Minimal moral acceptability: the institution does not [persist] in violations of basic rights...
4. Acceptable origination (or sound pedigree): the institution came to be in a morally acceptable fashion, through an appropriate process.

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44 Ibid.
Sound procedures: especially in cases where there is likely to be serious disagreement about outcomes or where outcomes will significantly advantage some and disadvantage others, an institution’s procedures should be... reliably apt for achieving the institution’s aims—and in particular should be sufficiently fair that those who disagree with an outcome can reasonably conclude that the procedures did not stack the deck against them.\footnote{Ibid., 59-60.}

Buchanan explicated the first three of these standards in his widely cited article written with Robert Keohane, \textit{The Legitimacy of Global Governance Institutions}. In this article Buchanan and Keohane aim to establish normative standards for legitimacy that draw a middle ground between a member states’ consent-based account of legitimacy and the ‘unrealistic view’\footnote{Buchanan and Keohane, ‘The Legitimacy of Global Governance Institutions’, 405.} that these institutions should be democratic. After finding three possible standards of legitimacy lacking – state consent, the consent of democratic states and global democracy – Buchanan and Keohane explicate their account of the first three standards listed above, and a variation on the fifth standard.

The minimal moral acceptability standard requires that GGIs must not ‘persist in violations of the least controversial human rights,’ including ‘the rights to physical security, to liberty... and the right to subsistence.’\footnote{Ibid., 420.} Buchanan and Keohane acknowledge that this is a ‘rather minimal moral requirement for legitimacy’.\footnote{Ibid.} However they argue that it would be difficult to justify more robust standards, in light of reasonable disagreement about the good and even greater disagreement at the international level about the role of GGIs in promoting justice and moral uncertainty.\footnote{Ibid., 418-419.} They further decline to attribute the responsibility of \textit{promoting} human rights to institutions. They are argue that to assume institutions \textit{should} promote human rights simply because they can amounts to ‘duty dumping’.\footnote{Ibid., 420.} Duty dumping is problematic, they claim, because not only does it make ‘unsupported attributions of institutional responsibility; it also distracts attention from the difficult task of determining what a fair distribution of the burdens [for protecting human rights].’\footnote{Ibid., 421.} Consequently Buchanan and Keohane focus on refraining
from persisting in violating the most central human rights, in the hope that this can form the basis for a more robust common ground.

The comparative benefit standard and institutional integrity requirement are related. The former holds that GGIs are legitimate if there is no comparably superior institution fulfilling the same function;\(^53\) The latter entails that GGIs must not exhibit ‘a pattern of egregious disparity between its actual performance... and its self-proclaimed... major goals’.\(^54\) Instead, institutions must respect their own guidelines. To supplement these standards, Buchanan and Keohane add requirements about the \textit{epistemic-deliberative} quality of the institution, which Buchanan later adapted to the \textit{sound procedure} standard. This standard requires that institutions generate useful information (and thus fulfil their purpose of solving coordination problems); narrow transparency to foster accountability; and broad transparency to foster revisions of their terms of accountability.\(^55\)

Does Buchanan provide an account which includes sufficient reason or value to justify a GGI’s authority? Interestingly, despite holding a teleological view of authority, Buchanan does not explicate what he sees as the end of political authority, except that it should solve coordination problems. Due to his commitment to value pluralism, Buchanan is silent about precisely which coordination problems we should focus on solving. Consequently, it is difficult to determine if Buchanan’s account provides sufficiently good ends to justify authority. Nevertheless, we can assess his standards.

While each of Buchanan’s standards are reasonable, they are too thin to use as reasons to justify the authority of GGIs. The minimal moral acceptability standard is too minimal. Under this standard, institutions may violate human rights a number of times, so long as they do not \textit{persist} in these violations. To use such a low standard seems to undermine the importance of legitimacy assessments. A further concern with the justification for their minimal standards is its refusal to attribute responsibility on GGIs for fear of ‘duty dumping’. In the beginning of their paper, Buchanan and Keohane thoroughly and convincingly explicate the extensive role and influence of GGIs in the modern world, writing ‘they constrain the choices facing societies’.\(^56\) Given the extensive capacity of these institutions to affect our lives, it seems reasonable that we should have comparably extensive expectations of those institutions.

\(^{53}\) Ibid., 422.
\(^{54}\) Ibid.
\(^{55}\) Ibid., 429.
\(^{56}\) Ibid. 407.
Even if the role that these institutions play is limited by their specialisation, relationship with other authorities and institutional constraints, surely we can do better than ask institutions not to persist in violating the least controversial human rights. Moreover, Buchanan and Keohane emphasise only the least controversial human rights. Yet, even this conservative approach to human rights falls into much the same trap as Rawls’ basic goods. As alluded to in the previous section, human rights can provide some guidance on what people needed for a basic standard of life but cannot accommodate the differences between people in converting rights into functioning.

The comparative benefit and institutional integrity standards also establish only minimal negative restraints on institutions, requiring that an institution not remain steadfastly ‘instrumentally suboptimal when it could take steps to become significantly more efficient or effective’.\(^57\) Their analysis in this section appears to be more descriptive than analytic. Their line of argument rests on the observation that failure to meet either of these standards would likely diminish the institution’s standing with its members and therefore its efficacy. While efficacy is certainly an important consideration, it only carries sufficient normative weight when institutions are efficacious in achieving sufficiently good or valuable ends. This is why the negative presentation of these standards is problematic – they set out only what institutions must not do, rather than what they ought to do to achieve legitimacy. Similarly, the epistemic virtues only provide institutional features that may assist in promoting good outcomes, but cannot tell us what those good outcomes are, aside from solving coordination problems. They do not provide a guide for determining which are the most pressing coordination problems or even what efficacy in solving coordination problems might look like. In many ways, Buchanan’s work is quite conservative, offering only minimal standards that he hopes can be universally accepted by all reasonable persons. Aside from the end of solving coordination problems, Buchanan does not specify particular ends of political institutions, not does he provide a framework to assess which coordination problems these institutions should prioritise. For a more robust teleological account, we must look to standards of legitimacy that provide a more substantive account of the good.

**The Common Good as end of Political Authority**

One good that appears to be a plausible candidate to serve as the normative grounds for justified political authority is the promotion of human flourishing. In this section I consider the applicability of theories of

\(^57\) Ibid., 422.
the common good to GGIs as a means to justify their authority. With some modification, I argue, the ‘goodness’ aspect of the common good can indeed act as a sufficient reason to justify the authority of GGIs.

Historically, notions of human flourishing have been linked to, and encapsulated within, notions of the common good. The common good is most famously promulgated by Aristotle; whose writings include three manifestations of the common good – the instrumental, aggregative and distinctive common good.\(^{58}\) The instrumental account defines the common good as providing the necessary conditions for each individual to live well and achieve *eudaimonia* (flourishing).\(^{59}\) The aggregative account sees the common good as the sum of each citizen’s wellbeing. Each citizen’s wellbeing is taken as a reason for action for the authority. Once the wellbeing of all individuals is considered, the authority has a ‘common’ reason for action that justifies its authority.\(^{60}\) The distinctive common good can be explained best by the idiom, greater than the sum of its parts. As in the other two conceptions, the distinctive conception of the common good holds that the good of the political community consist of the flourishing of each individual. However, the distinctive conception adds the notion that humans realise a particular form of flourishing through participation in the political that they cannot realised in any other way. Thus, political participation becomes a necessary component of living a good life and the political community as a whole becomes a component of the common good.\(^{61}\) Under each of the conceptions, the role of political authority is to promote the common good.

Despite its Aristotelian roots, the common good is not a strictly ancient idea. Indeed, the common good continues to influence Western liberal democracies and Western liberal thought.\(^{62}\) For example, the preamble of the American constitution includes the promotion of the ‘general welfare’ as one of only six listed purposes of the Constitution.\(^{63}\) The common good also appears in the works of politically liberal

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58 While these three senses of the common good are implicit in Aristotle, he does not make this distinction. For a discussion identifying these three instances, see Mark C. Murphy, ‘The Common Good’ *Review of Metaphysics*, 59 (2005): 133-164.


theorists, such as John Rawls. In *A Theory of Justice*, Rawls defines the common good as ‘maintaining conditions and achieving objectives that are similarly to everyone’s advantage.’\(^6^4\) Despite his strong commitment to individual liberty, Rawls acknowledges that the freedom to make choices for oneself should be sometimes subordinated to the judgement of an authority, when such subordination serves the common good.\(^6^5\) This acknowledgement indicates that Rawls recognises the conditions that contribute to everyone’s advantage (that is, the common good) consist in something more than individual liberty and that the political liberties are in fact subordinate, at least some of the time, to these general conditions that constitute the common good. This recognition turn can help us to consider what, other than individual liberty, may contribute to human flourishing.

Before considering what constitutes human flourishing, it is instructive to distinguish between two aspects of the common good: the ‘commonness’ and the ‘goodness’. This distinction can assist in applying the common good to GGI s. The commonness aspect can be understood as genuinely shared ‘aims of political deliberation and action’;\(^6^6\) while ‘goodness’ relates to the enabling conditions for human flourishing. While it may be possible to imagine genuinely shared aims of political deliberation in a small polis, it is difficult to see how this can be applied to GGI s, whose members represent multiple and often competing constituencies. One possible response would be to take a cosmopolitan position and argue that we are all interconnected and so our flourishing is interconnected. Therefore, in a very broad sense, we share a global common good. Indeed, there are many global collective action problems that require a coordinated global response — such as environmental issues. This response could count as a genuinely shared goal that would enhance our wellbeing if each country agreed to act. Consideration of human flourishing in relation to environmental problems, which constitute global commons, could provide a shared normative reason for action. Yet even if we accept this example, it remains unclear whether the promotion of human flourishing in general, as opposed to the aspects of human flourishing that relate to environmental problems, could constitute a ‘genuinely shared’ goal such that it could meet the ‘commonness’ requirement. For GGI s it is unlikely that the wellbeing of citizens of every member state would be a ‘genuinely’ shared goal between all members (though in an ideal world perhaps it would be).

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\(^6^5\) In the analogy between a ship at sea and the ship of state, Rawls writes ‘the political liberties are indeed subordinate to the other freedoms that, so to say, define the intrinsic good of the passengers.’ John Rawls, *A Theory of Justice*, 233.
Instead, member states of various GGIs are more likely to be concerned with citizens of their own country and less concerned about expending political and material capital on improving the wellbeing of people in other countries.

Though it may be difficult to establish the goal of promoting the common good at the international level, considerations of Aristotle’s conception of the good remain instructive for the legitimacy of GGIs. Aristotle’s account of the good – understood as *eudaimonia* (human flourishing) – can play an important role in justifying and setting the purpose of political authority. In each of the three conceptions of the common good discussed above, human flourishing is the central feature. This approach can provide a useful basis for directing political activity today. Indeed, similar approaches are commonly used in modern political contexts, including at the international level. For example, one of the Human Development Reports adopts an explicitly ‘eudaimonic’ approach to development, stating, ‘[t]he basic objective of development is to create an enabling environment for people to enjoy long, healthy and creative lives.’

How can we understand the ‘goodness’ aspect of the common good in relation to GGIs? Here it is important to be explicit about the role of political authority in relation to the good. For Aristotelians, the good is *eudaimonia* (human flourishing). Yet, as mentioned above, political authority cannot make people flourish. Instead, political authority can *promote* the enabling condition that give people opportunities to flourish. ‘Enabling conditions’ refer to the material, social and economic resources; the social, cultural and political structures; and the public policies that inform people’s opportunities. Importantly, there is a gap between the enabling conditions for flourishing, which authorities can promote, and actual flourishing. This gap is filled by individual choice. Thus, holding the promotion of the enabling conditions for flourishing as the end of authority maintains respect for individual choice.

A further instructive aspect of Aristotle’s account of human flourishing is that it defends an objective rather than a subjective notion of wellbeing. Under a subjective notion of wellbeing, a person lives well when they think or feel that they are living well. For example, if a member of a gang, who spends her days

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68 I will expand on this in the section on the capabilities approach below.
trafficking drugs and killing people, believes that she is flourishing, an extreme subjectivist would have to accept that she is flourishing (though the subjectivist may personally disapprove of this lifestyle and find alternative arguments for why she should not behave in such ways). Under an objective understanding of wellbeing, there are certain universal measures that determine whether someone is leading a good life. These objective measures vary widely in both philosophical and more practical literatures. For utilitarians wellbeing is the balance between good and bad things in one’s life. In positive psychology, flourishing is understood to rest on five ‘pillars’: positive emotion, engagement, relationships, meaning and accomplishment. Another objective account of wellbeing argues that it rests on cultivating certain attributes or behaviours, including gratitude, resilience, self-compassion, authenticity, intuition, creativity, calmness, meaningful work and play. Though these researchers come from different fields, their lists are remarkably similar. For Aristotle, a person flourishes when they live in accordance with virtue. He acknowledges that this may not be pleasant in the sense that indulging in eating large quantities of ice cream may be pleasant, but it will make us ‘happy’ in the sense that it will make us content, good and flourishing.

Another prominent objectivist account of wellbeing is offered by Martha Nussbaum, whose position may be considered to be broadly neo-Aristotelian. Nussbaum argues that simple desire-satisfaction does not necessarily contribute to a good, full human life. This is because, in part, we may desire certain things due to maladaptation to harmful environments. The term ‘adaptive preferences’ refers to the likelihood that in many ways, our circumstances shape the options available to us, which affect our beliefs and our preferences. These consequences can occur through adaptation to harmful situations or can

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70 Martha Nussbaum, for example, has a list of capabilities that she sees as of universally necessary for a flourishing life. See Martha Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’ Feminist Economics 9 (2003): 33-34. John Finnis also has a list of ‘basic goods’. See Natural Law and Natural Rights. The OECD has also developed a ‘Better Life Index’, with a list of universal indicators for well-being. See ‘Better Life Index’, OECD, http://www.oecdbetterlifeindex.org/#/11111111111.


73 See for example, Brené Brown, The Gifts of Imperfection, (Minnesota: Hazelden, 2010).

74 Nussbaum, ‘Social Justice and Universalism’. See also Nelson, ‘From Primary Goods to Capabilities’, 94.

75 Nussbaum, ‘Capabilities as Fundamental Entitlements’.

76 Martha Nussbaum, Women and Human Development, 7.
result from insufficient information to make informed decisions. Nussbaum contends that any theory based on individual preferences that fails to take account of adaptive preferences will likely bias policies towards the status quo, and may not lead to a good, full human life. However, this does not mean that subjective experience is irrelevant to contemporary understandings of wellbeing. On the contrary, people's subjective experience is strongly correlated and indeed causally related to their physical and mental health, both of which are necessary components of wellbeing. Therefore, how people subjectively experience their lives is an important component of flourishing; but is not the only component. Instead, both Aristotle’s and Nussbaum’s approaches ask us to consider if there could be an objective list of goods, virtues, or capabilities that, when present, would indicate that any individual is flourishing.

Yet objectivist approaches to wellbeing are highly controversial. Historically, objectivist wellbeing has been linked with patriarchal or prescriptive approaches to authority. A common critique is that objectivism undermines individual freedom and autonomy. Moon, for example, states that the common good is generally understood as a comprehensive doctrine that promotes a single, particular way of life. By claiming that the common good is a ‘comprehensive moral doctrine’, Moon limits theories of the common good to those that promote one idea of the good life, one idea of how to live, a set of virtues to aspire to and an overly prescriptive approach to determining the sorts of relationships we should have. If the most important aspects of life are pre-determined, the argument goes, there is no respect for ‘the right of people to choose a plan of life according to their own lights, determining what is most central and what is not. Such evaluative choices must be left to each citizen. For this reason, politics must refuse itself a determinate theory of the human being and the human good.’ Martha Nussbaum argues this association between objectivist accounts has led to too great a rejection of ‘essentialism’ in favour of ‘extreme relativism’. She contends that though there is a legitimate critique to be made of what she calls essentialism (what I call objectivism), it is still possible to determine an objective ‘historically

77 Nussbaum, ‘Public Philosophy and International Feminism’, 762-796. See also, Nussbaum, ‘Capabilities as Fundamental Entitlements,’ 33-34; and See also, Sen, The Standard of Living.
78 Nussbaum, ‘Capabilities as Fundamental Entitlements,’ 34.
82 Ibid.
sensitive account of the most basic human needs and human functions.\textsuperscript{83} This conviction is not based on what Nussbaum labels metaphysical realism,\textsuperscript{84} but instead that more or less 'essential' human qualities can be found through an internal examination of human history and the human being.\textsuperscript{85}

Examination of critiques such as those above and responses to those critiques can assist us to further define the elements of the common good that we may wish to adopt for an account of human flourishing and its relationship to legitimacy. It is possible to conceive of a common good account that is focused on promoting the \textit{conditions} for human flourishing, while still recognising the multiplicity of ways in which people flourish and the plurality of good lives. Indeed, the psychological and sociological research above indicates that it is possible to hold an objectivist view of wellbeing without assuming that there is only one single way to flourish. Once we combine the researchers’ qualities listed above with our unique temperaments and talents, a flourishing life could take an incalculable variety of forms. For some a life undertaking artistic endeavours and attending galleries on their own will enable them to flourish, or at least contribute to their flourishing. For others, dedicating their lives to helping others, perhaps in a hospital, will enable them to flourish; while others still may need constant variety and the freedom to pursue multiple careers and hobbies. Importantly, while each of these ways of flourishing are very different to each other, these differences do not preclude common necessary conditions to achieve flourishing. Indeed, in each of the examples the individuals need reasonable health, some education, peace and security, basic infrastructure, some freedom of choice or autonomy, etc. It is clear that at a very basic level there are some human needs that are universal and that without these conditions it is very difficult, if not impossible, to live a flourishing life. Importantly, establishing universal goods and universal harms does not preclude a multiplicity of good lives. That is, while engagement, relationships, gratitude and creativity may be universally good and contribute to wellbeing, the ways people enact these attributes and habits can and does vary widely. Thus, it is possible to see that universally shared \textit{conditions} for human flourishing are not necessarily at odds with liberal notions of reasonable disagreement about the good.

\textsuperscript{83} Ibid., S50.

\textsuperscript{84} Metaphysical realism can be understood as the view that 'there is some determinate way the world is, apart from human history and human interpretations.' Ibid.

\textsuperscript{85} Ibid., S49-50.
To be clear, the approach that has come out in this section is not strictly an Aristotelian common good. There are two important reasons I have moved away from an Aristotelian view of the common good. The first is practical: as discussed above, it is difficult to establish a sufficiently common good at the international level. The second is Aristotle’s understanding of human flourishing as practicing the virtues. Practicing specific virtues provides insufficient autonomy for the modern world. Nevertheless, Aristotle’s instrumental understanding of political authority, coupled with his focus on the enabling condition for flourishing, provide a useful basis from which to consider a possible justification of GGLs’ legitimacy, namely the promotion of the necessary enabling conditions for human wellbeing.

Promoting Human Flourishing as a Justification for Authority

The fundamental argument in favour of holding the promotion of the conditions for human flourishing as the normative grounds of GGLs’ legitimacy is that human flourishing is self-evidently good and universally desirable. In this context, the promotion of the conditions for human flourishing can be understood as ‘a normative ideal’, against which we can assess the outcomes of authorities. It is these underlying and enabling conditions that political authorities should focus on promoting and that can be both the goal of and justification for the authority of GGLs. A focus on the conditions for flourishing is similar to Rawls’ use of the primary goods. Just as in Rawls’ account, individuals are free to pursue their own version of the good life, once the basic conditions are in place. While some may object that the conditions for flourishing may place too many limits on the kinds of lives people can pursue, this is very similar to Rawls’ approach. Though Rawls supports value pluralism, he does not accept all accounts of the good. Any comprehensive doctrine that rejects his fundamental principles to the extent that they cannot allow others to live in accordance with them, is excluded from his account of social justice. While some may choose to practice a type of comprehensive doctrine that is inconsistent with the principles of justice, they may not use state power to enforce their view or gain others’ allegiance to it. Thus, this approach accommodates the tension between the necessity of providing public policy at a macro-level, and respect for individual rights and differences in how individuals flourish in daily life.

Some may be concerned that an exclusive focus on the conditions for human flourishing or wellbeing would exclude other important ends of GGLs, such as solving coordination problems and promoting

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86 Duke ‘Political Authority and the Common Good’, 885.
87 Rawls, Political Liberalism, 174.
88 Rawls, Political Liberalism, 134-140.
peace, social justice, human rights, fair procedure and democratic participation. Yet it is possible to subsume all of these values under the conditions for wellbeing. That is to say, many of the plausible ends of authority can be seen as necessary conditions for human flourishing and so can be captured within this account. For example, it is difficult to see how people could flourish in circumstances with coordination problems, war and instability, poor employment opportunities or violations of their human rights. Thus, as each of these goods is instrumental to human flourishing, an account of legitimacy that rests on promoting the conditions for wellbeing will need to promote each of these goods.

The notion of the ‘enabling conditions for wellbeing’ can also capture the requirements of fair procedures. Theories of fair procedure legitimise authority by recourse to a ‘fair’ decision-making process and can include democratic processes.\(^89\) Fair procedure constrains the methods for decision making that public authorities can use, as well as the procedures for determining who should be in authority. If wellbeing is the end of public authority then these constraints can be assessed in relation to, and justified in terms of, the end. That is to say, in response to demands of fair procedure, it is possible to evaluate the procedures of any public authority by asking: do these procedures on the whole produce outcomes that assist in the promotion of subjects’ wellbeing? Consequently, while the ultimate goal of GGIs should be to promote the conditions of human flourishing, this requires important constraints on how authorities make decisions and the means they use to achieve their ends – neither should negatively impact subjects’ wellbeing in a significant or lasting way. Any policy or procedure that harms or marginalises some people will necessarily defeat the ultimate goal – to promote the conditions for human flourishing. Human flourishing thus becomes a benchmark against which we can measure the governance structures, the goals, the policy decisions and the efficacy of political authorities.

A further argument in favour of this approach is that in many ways political authorities already promote at least some necessary enabling conditions for flourishing and where they fail to do so, their legitimacy is often questioned. Because of coordination problems, humans have greater opportunities to flourish in a political community than on their own. Coordination problems can arise when one person’s pursuit of her own flourishing interacts with another’s. Solving coordination problems thus allows people to pursue their own notions of flourishing within certain parameters. Ideally, these parameters should be as ‘fair’

\(^89\) See for example Thomas Christiano’s account of deliberative democracy in, The Rule of the Many (Boulder, CO: Westview Press, 1996), 35.
As possible to allow both individuals and communities to flourish. INTERNATIONALLY, we see that counties’ uncoordinated pursuit of their own good can have disastrous consequences for all. For example, the Great Depression worsened when countries depreciated the value of their currency and increased import tariffs. To prevent this from happening again, the International Monetary Fund (a GGI), was established to manage these kinds of coordination problems and prevent the economic conditions that contributed to the Great Depression. Thus, the capacity to solve coordination problems is an example of a necessary condition that must be promoted by political authorities to enable everyone to flourish.

**Flourishing is a particularly important normative reason for GGIs**

International legal definitions of GGIs and some of the principles used in international law to interpret the scope of GGIs’ authority, provide valuable insight into way this approach is particularly salient for GGIs. The International Court of Justice (ICJ), for example, defines an international organisation as ‘an entity established by agreement […] which has states as its principal members’. These organisations are ‘endowed with a certain autonomy, to which the parties entrust the task of realising common goals.’ This autonomy is limited to ‘the capacity… to perform acts related to [the organisation’s] purpose.’ That is to say, international organisations do not have general competence; instead they are directed by the ‘principle of speciality’. The limits of their powers are ‘a function of the common interests whose promotion those States entrust to them.’ This definition clearly points to a teleological, or task-efficacy, understanding of GGIs.

In an increasingly globalised world, where many problems cross national borders, GGIs have a particularly important role to play in promoting the conditions for wellbeing. One characteristic of GGIs that makes human flourishing an especially relevant normative standard for their legitimacy is that the teleological nature of the approach suits the teleological nature of GGIs. As the ICJ makes clear, GGIs are designed to

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90 While parameters should be as fair as possible, it is likely that the shape of the parameters will affect some people than others. This does not mean they are necessarily biased, it simply means it is impossible to ensure that the positive and negative impacts of political decisions can be perfectly and evenly distributed all the time.


fulfil particular purposes. Consequently, it is reasonable to think of the legitimacy of GGIs in a straightforwardly teleological way and to tie a GGI’s legitimacy to its ability to solve its assigned problems. The problems usually affect people’s capacity to flourish in some substantial way and are often characterised by a degree of complexity and ‘unboundedness’ (not confined to one geographical location), which make the problems impossible for a single country to solve on its own. That is to say most GGIs are established to solve problems that inhibit people’s flourishing. By solving or managing these problems, GGIs promote some of the necessary conditions for our wellbeing. Thus, it seems reasonable to tie their legitimacy to their efficacy in achieving this task.

Tying GGIs’ legitimacy to promoting human the enabling conditions flourishing is all the more important because GGIs, by their nature, tend to be removed from individuals. Their constituents are member states, not people. Moreover, at this point in history, GGIs cannot be democratic in the sense that individuals do not participate in their decision-making processes. Instead, representatives from member states participate in the decision making. Consequently, it is all the more important to place the welfare of people at the core of GGIs’ legitimacy to maintain their focus on people. This approach should lead to practical improvements in public policy outcomes. Using wellbeing as a measure should inform the implicit and explicit goals of GGIs, which should in turn affect policy decisions and outputs. If human flourishing is the explicit goal of GGIs, it should guide the design, purposes, processes, founding documents and policy decisions of political authorities.

The Capabilities Approach

Until this point I have not provided an account of wellbeing. As mentioned above, there is significant empirical research underway to determine what constitutes wellbeing and I will defer to those accounts. However, my focus is on the enabling conditions for wellbeing, rather than actual wellbeing. In this section I argue it is possible to use Martha Nussbaum’s capabilities approach and her list of capabilities as proxies for the necessary conditions for human wellbeing and measure GGIs’ legitimacy against their efficacy in promoting those capabilities. This approach is both theoretically rich, thanks to the considerable

95 Nadia Urbinati, Representative Democracy: Principles and Genealogy (Chicargo: University of Chicargo Press, 2006).
contributions of Amartya Sen and Martha Nussbaum, and practically useful because it enables us to consider and even measure subjects' quality of life.

Nussbaum, in conjunction with Sen and many other scholars from a variety of disciplines, has undertaken significant study into what constitutes a life worthy of human dignity. Her research, both philosophical and in the field, has led her to the view that, to achieve a quality life, humans require ‘a set of material preconditions,’ and that the capabilities approach can provide a framework within which we can measure preconditions. The capabilities approach thus enables us to make ‘arguments about which lives are worthy of the dignity of the human being’. While Nussbaum generally does not use the language of flourishing, instead focusing on quality of life, justice, human dignity and the necessary conditions for a life worthy of human dignity, it is clear that these phrases broadly hold the same meaning as wellbeing and flourishing. The primary focus of the capabilities approach is on ‘what people are actually able to do and be’. The approach ‘takes each person as an end, asking not just about the total or average well-being but about the opportunities available to each person.’ Importantly, the capabilities approach does not argue that people must actually function in any particular way. Individuals cannot and should not be forced into functioning and may choose not to avail themselves of some or all of their opportunities to function. In this way the capabilities approach manages to maintain a high level of respect for individual liberty and avoids adopting a particular view of the good life.

The capabilities approach was pioneered by the Indian economist Amartya Sen, as an alternative to utilitarian accounts of economic development. The approach is framed as an account of social justice and as a measurement tool for international development. Sen dismisses Gross National Product (GNP) as a measure of development, arguing that GNP is a blunt instrument, which ignores distributional issues and fails to accommodate differences between individuals’ needs for resources and their ability to convert

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96 For a discussion of her inter-disciplinary research, see Nussbaum, ‘Public Philosophy and International Feminism’.
97 Ibid., 770.
98 Ibid., 769.
99 Nussbaum, Women and Human Development, 13. Nussbaum’s views on the worth and dignity of every human being were influenced by the Stoics, as well as Enlightenment thinkers, such as Hugo Grotius, Adam Smith, John Stuart Mill and Immanuel Kant. See, Martha Nussbaum, Creating Capabilities: The Human Development Approach, (Cambridge MA: Harvard University Press, 2011), 129-142.
100 Nussbaum, Women and Human Development, 5.
101 Nussbaum, Creating Capabilities: The Human Development Approach, 18.
resources into flourishing. To develop his approach, Sen both builds on and departs from Rawls’ justice as fairness. Sen sees his work as an internal critique of Rawls’ theory, especially his primary goods. Instead of focusing on establishing fair rules for distribution and determining a minimum level of necessary resources, Sen recognises that resources are not in themselves valuable. Resources are instrumental goods, only valuable to the extent that they provide us with opportunities – they enable us to achieve ‘good’ ends. Moreover, people have differing capacity to convert resources into functioning. For example, a person who encounters cultural barriers to literacy will need greater support to become literate. Consequently, the capabilities approach argues that for governments to be minimally just they must secure certain capabilities for each and every person, rather than simply provide some arbitrary amount of resources. The approach thus moves our focus from resources as an end to what people are able to do with the resources they have, and what else they need in order to be capable of living a life worthy of human dignity. The aim is to enable everyone access to ‘the central elements of truly human functioning’.

Nussbaum’s capabilities approach develops Sen’s work and departs from it in a small number of significant ways. One point of departure is over the prioritisation of freedom. Sen argues that ‘capability reflects a person’s freedom to choose between alternative lives (functioning combinations), and its value need not derive from one particular “comprehensive doctrine” demanding one specific way of living.’ Sen holds freedom as the ‘preeminent objective of development’. Conversely, Nussbaum argues that capabilities are incommensurable goods. This means freedom does not have priority over other capabilities, such as education. Nussbaum’s refusal to provide a lexical ordering of the capabilities stems from her Marxian-Aristotelian view of truly human functioning. She sees that ‘the quality of a human

105 Nussbaum, Women and Human Development, 5.
life involves multiple elements whose relationship to one another needs close study’.\textsuperscript{110} Nussbaum is a value pluralist.

Nussbaum departs further from Sen by providing a list of capabilities. Sen refuses to generate a specific list because he believes any list should be adaptable to changing circumstances; food will be more important during a famine, for example. More importantly, Sen argues that having recourse to any ‘fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation’.\textsuperscript{111} Conversely, Nussbaum holds that creating a specific list, even if it is provisional and subject to change, provides content and meaning to minimum standards of social justice. She argues that not only is it possible to establish a list of certain central abilities and opportunities, but that it is necessary to do so.\textsuperscript{112} She believes, we can only have an adequate theory of social justice ‘if we are willing to make claims about fundamental entitlements that are to some extent independent of the preferences that people happen to have’.\textsuperscript{113} The claims of fundamental entitlements must be concrete if they are to produce results and must be independent of people’s preference because, as she astutely observes, people’s preferences can be shaped by unjust background conditions, which cause them to choose things that are harmful, a phenomenon known as ‘adaptive preferences’.\textsuperscript{114} A list allows for both comparative measures of quality of life and basic principles to inform fundamental constitutional guarantees.

Nussbaum uses this list as the basis for positing governments’ moral obligations to their citizens, as a basic standard of social justice and as a basis for determining the features which make a life worthy of human dignity.\textsuperscript{115} If we accept that every person has inherent value and dignity, this will justify – and in fact require – the promotion of the conditions for their wellbeing. Seen in this way, promoting the conditions for human flourishing is universally morally required. Because I adopt the capabilities approach as a way to understand the necessary conditions for human flourishing, an actual list is crucial both theoretically and practically. From a theoretically perspective it is important to provide content to

\textsuperscript{110} Nussbaum, Creating Capabilities, x.
\textsuperscript{112} Nelson agrees with this approach, arguing that if Sen is genuinely committed to a ‘Rawlsian framework, and capabilities are indeed going to determine the social minimum that the basic structure of society must ensure to all citizens, we must know which are to be included.’ Nelson, ‘From Primary Goods to Capabilities’, 106.
\textsuperscript{113} Nussbaum, ‘Capabilities as Fundamental Entitlements’, 34.
\textsuperscript{114} Ibid., 33-34.
\textsuperscript{115} Nussbaum argues that her list of ‘core human entitlements... should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires.’ Frontiers of Justice, 70.
the conditions for human flourishing in order to determine if the theory is logically coherent. On a practical level, by focusing our attention on outcomes, the list enables us to measure authorities’ efficacy in supporting our wellbeing. The list also empowers us to consider why an authority may not be very effective. For example, an authority may be ineffective because it has slow decision-making processes or because it does not have enough engagement with, or accountability to, the people affected by its policies. If we have a standard measure of the purpose of authority (to promote the capabilities), we will be better able to identify areas for reform. More importantly, the list provokes a discussion about what is of real value to humans and the role of political authority in promoting those goods.

Nussbaum focuses on providing ‘a threshold level of each capability, beneath which it is held that truly human functioning is not available to citizens’.\footnote{Nussbaum, \textit{Women and Human Development}, 6. Italics in original.} She leaves unanswered questions of what to do once all citizens are above the threshold level of capabilities, such as, whether all people have should equal capability. She argues that such questions can be deferred because achieving a minimum threshold of capability is still extremely difficult and far off.\footnote{Nussbaum, ‘Public Philosophy and International Feminism’, 788.} Despite her goal of establishing only minimum standards for wellbeing, Nussbaum acknowledges that the list is ‘tentative and revisable’,\footnote{Nussbaum, ‘Capabilities as Fundamental Entitlements’, 36.} has undergone change since it was first developed and will likely undergo further change,\footnote{Ibid., 41.} as we learn more about people’s needs. Such changes could be supported through further theoretical and empirical research as to which capabilities provide the most opportunities for people to flourish. Nussbaum’s work draws much needed attention to the question of authority’s role in providing and promoting the conditions for human wellbeing and establishes an excellent basis for further discussion.

The list of capabilities is as follows:

1. Life. Be able to live to the end of a human life of normal length.

2. Bodily Health. Be able to have good health; to be adequately nourished and have adequate shelter.

3. Bodily Integrity. Be able to move freely; to be secure against violent assault, including domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

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\footnote{Nussbaum, \textit{Women and Human Development}, 6. Italics in original.}
\footnote{Nussbaum, ‘Public Philosophy and International Feminism’, 788.}
\footnote{Nussbaum, ‘Capabilities as Fundamental Entitlements’, 36.}
\footnote{Ibid., 41.}
4. Senses, Imagination, and Thought. Be able to use the senses, to imagine, think, and reason – and to do these things in a "truly human" way, informed and cultivated by an adequate education... Be able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Be able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise.

5. Emotions. Be able to have attachments to things and people outside ourselves; in general, to love, to grieve, to experience longing, gratitude, and justified anger. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

6. Practical Reason. Be able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)

7. Affiliation.
A) Be able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction... (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)
B) Have the social bases of self-respect and non-humiliation; be able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

8. Other Species. Be able to live with concern for and in relation to animals, plants, and the natural world.

9. Play. Be able to laugh, to play, to enjoy recreational activities.

A) Political. Be able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.
B) Material. Being able to hold property (both land and movable goods) ... on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from
unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason, and entering into meaningful relationships of mutual recognition with other workers.\textsuperscript{120}

**Critiques of the Capabilities Approach**

As with any influential theory, Nussbaum’s capabilities approach has been the subject of considerable critique. One of the strongest arguments against adopting the capabilities approach, or indeed any account that has a substantive view of human flourishing, as the basis of legitimacy is that it will lead to paternalism. It is perhaps for this reason that Nussbaum emphasises the political neutrality of her account. Taking a line from Rawls, Nussbaum argues that her list is a ‘free-standing ‘partial moral conception’’.\textsuperscript{121} In other words, the list ‘is explicitly introduced for political purposes only, and without grounding in metaphysical ideas of the sort that divide people along lines of culture and religion.’\textsuperscript{122} She further asserts that only those capabilities are included on the list that ‘can be convincingly argued to be of central importance in any human life, whatever else the person pursues’.\textsuperscript{123} Importantly, this does not mean that Nussbaum supports every version of the good life. As mentioned above, Rawls himself does not argue that political liberalism requires the acceptance of all ideas of the good. Instead he writes, ‘it is neither possible, nor desirable, to enable everyone to advance their final ends no matter these ends are, for some may desire, for example, the oppression of others as an end in itself.’\textsuperscript{124} Consequently, people are free to choose their own good, ‘as long as it does not violate what justice demands.’\textsuperscript{125}

Nussbaum’s approach is broadly similar in that she starts from the premise of the basic dignity and value of all people. This creates both rights for individuals and obligations on political authorities. The assumption of universal human dignity also places certain limitations on human activity and ways of life. For Nussbaum, political authorities have a positive obligation to provide the conditions that give people the opportunity to live a life worthy of human dignity. If a member of society chooses a way of life that harms other’s capacity to live a flourishing life, they will not be permitted to pursue their version of the good to the extent that it impacts others. Because Nussbaum’s notion of the good – a life worthy of

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\textsuperscript{120} Nussbaum, ‘Capabilities as Fundamental Entitlements’, 41-42. I have edited this list for brevity without changing any meaning.

\textsuperscript{121} Nussbaum, ‘Capabilities as Fundamental Entitlements’, 42.

\textsuperscript{122} Ibid.

\textsuperscript{123} Nussbaum, *Women and Human Development*, 74.


\textsuperscript{125} Rawls, *A Theory of Justice*, 81.
human dignity – is slightly more robust than Rawls’ notion of goodness as rationality, the capabilities approach produces limitations on acceptable ways of life that are possibly more restrictive than those produced by Rawls’ theory. Nevertheless, this is philosophically consistent if we accept the fundamental premise that all people are worth of human dignity.

A related concern about Nussbaum’s account is that it is culturally imperialist. Nussbaum claims that the capabilities on her list are ‘fully universal’ and ‘important for each and every citizen, in each and every nation’; yet some of the items on her list appear quintessentially Western. Property rights, for example, became of central significance due to Locke’s Two Treatises of Government (1689). However, across several of her works, Nussbaum convincingly argues that the right to own property, as well as the right to inherit property, the right to seek employment outside the home and thereby to become self-sufficient, are necessary capabilities to live a life worthy of human dignity. By describing the lives of very poor women living in India, Nussbaum shows that denying women property rights, in the name of traditional values and cultural relativism, does women an incredible disservice. She further argues that when ‘we speak simply of what people are actually able to do and to be, we do not even give the appearance of privileging a Western idea. Ideas of activity and ability are everywhere, and there is no culture in which people do not ask themselves what they are able to do and what opportunities they have for functioning.’ Moreover, we should also be conscious of the motives of those protecting ‘traditional’ values in the name of cultural respect. Some may see the expansion of capabilities for some currently disenfranchised groups as harming them. Before women’s suffrage, for example, some men argued that if women were given the right to vote it would do untold damage to men. This is where the notion of object versus subject flourishing becomes especially important. While some may think and feel that they are suffering as a result of others flourishing, it may not actually be the case.

126 Nussbaum, Women and Human Development, 6.
127 Ibid.
A further critique relates to Nussbaum’s claim of neutrality. The critique centres on Nussbaum’s statement that it is rational to want her list of capabilities ‘whatever else one wants,’ which includes our substantive conceptions of the good. Eric Nelson argues that there is ‘no sense in which [the Nussbaum’s list of ten capabilities] is neutral with respect to the good’. To counter Nussbaum’s assertion that her list is universally desirable regardless of one’s conception of the good, Nelson considers the example of someone who is celibate and believes that sexual satisfaction is sinful. In this case, the belief would lead the individual to reject Nussbaum’s list of ten capabilities because the list includes the capacity for sexual satisfaction. Therefore, Nelson concludes, it is not rational to want the capabilities, whatever else one wants.

There are several possible responses to this critique. The first is to argue that Nelson overlooks the word rational. Some would argue it is not rational to believe that sexual satisfaction is sinful – there is no scientific evidence for it – and therefore Nussbaum’s assertion holds. Not only does Nussbaum’s assertion hold, but her account manages to maintain respect for the individual, as they are able to practice celibacy themselves. However, this is perhaps too easy. It is always possible to counter that what we think is rational now, may not be seen rational in the future. More importantly, appealing to rationality does not sufficiently respect the essence of Nelson’s critique; namely that Nussbaum holds particular views of the good, of human dignity and of the universalisability of ethical norms – she simply does not admit that this is the case.

This critique has some validity. Nussbaum seems to assume that everyone will take a ‘political’ approach to social justice, in the Rawlsian sense. If everyone adopts a political approach, they would accept the capabilities as universal entitlements, practice their own version of the good in private, and exercise freedom of choice by choosing not to participate in certain forms of functioning that are outside their comprehensive doctrine. Nussbaum points to the Amish living in the United States, as an example of a group that has the right (and therefore the capacity) to vote, but chooses not to. However, even in liberal societies, people with strong comprehensive doctrines are not always willing to accept the separation between the public and the private spheres. A person who firmly believes that abortion is the same as

\[\text{\textsuperscript{32}}\text{ See for example, Berges, ‘Why the Capability Approach is Justified’, 17; and Nelson, ‘From Primary Goods to Capabilities’.}\]
\[\text{\textsuperscript{33}}\text{ Nussbaum, Women and Human Development, 88.}\]
\[\text{\textsuperscript{33}}\text{ Nelson, ‘From Primary Goods to Capabilities’, 99.}\]
\[\text{\textsuperscript{34}}\text{ Ibid.}\]
murder, for example, will not be content to allow abortion to be practiced in their society, just as most people would not be willing to condone murder. There can be no ‘overlapping consensus’ on such a matter. Here Nelson appropriately points out that Nussbaum appears to be missing an inherent characteristic of political authority; that all authorities make choices that limit our autonomy, often in ways that go against our comprehensive moral doctrines. The act of creating law or policy always restricts individual freedom and can never be entirely neutral in relation to the good. Indeed, as Nelson argues, ‘[t]he act of placing a given capability on the list necessarily discriminates against at least one idea of the good.’ Nussbaum perhaps overlooks this fact because of her, and indeed Rawls’, failure to acknowledge that the notions behind liberalism – the prioritisation of individual rights and the value of rational thought – constitute a comprehensive doctrine which has significant ramifications for the way political authorities are structured, as well as what they tolerate, condone and promote. By attempting to claim neutrality, Nussbaum does us and her theory a disservice by not adequately defending her conception of the good.

Importantly, while Nussbaum’s attempt to argue for the neutrality of her list is critical to making her arguments palatable to liberals, it is not necessary to argue for the merits of her approach. It is still possible to use Nussbaum’s account of the necessary conditions for human wellbeing and argue that they can be applied universally and simultaneously acknowledge that the capabilities possess a substantive account of the good. This requires arguing for the merits of Nussbaum’s assumptions and defending the possibility of a universalist approach. The aspect of Nussbaum’s approach that is of central importance is her commitment to the equal dignity and value of each person. Any comprehensive doctrine that accepts (or at least does not inhibit) the dignity of all persons and the requirements for the provision of certain material and social supports, will be compatible with the capabilities approach. Those comprehensive doctrines that do not accept each person as worthy of receiving the conditions for leading a life worthy of human dignity will not fit with this approach. This does not mean that it is fair to ascribe paternalism to the capabilities approach or pretend that the capabilities approach allows for only a narrow conception of the good. Indeed, the capabilities approach can accommodate the instantiation of a rich variety of good lives in multiple cultural contexts. Individual autonomy (within the framework of the capabilities) is protected because the capabilities approach is not concerned with, nor does it prescribe, particular human functioning. However, used in the context of legitimising GGIs, the

335 Ibid., 100.
The Capabilities Approach and Legitimacy

How do we move from the capabilities approach as a tool for development or as something national governments should provide to achieve social justice, to using it to measure GGIs’ legitimacy? A number of Nussbaum’s statements indicate that it is more cogent to think of her capabilities approach as a standard for legitimacy than as an account of social justice. For example, Nussbaum sees the capabilities as establishing universal ‘norms that should guide public policy’. She further sees that providing all conditions for human flourishing could act as both the goal of, and justification for, GGIs. Nussbaum’s list merely provides an example for how this could work in theory.

For a discussion of these see, for example, Nelson, ‘From Primary Goods to Capability’.

Nussbaum, ‘Capabilities as Fundamental Entitlements’, 42. See also, Nussbaum, Creating Capabilities, 15.

citizens with at least a basic level of capabilities should be a central goal of politics.\(^\text{139}\) Most tellingly, Nussbaum aims to provide an account ‘of basic constitutional principles that should be respected and implemented by the governments of all nations’. That Nussbaum sees her approach as informing constitutional design indicates the close relationship between this approach and legitimacy. There is also a strong link in legal theory between constitutionalism and legitimacy.\(^\text{140}\) If citizens have the right to expect their governments to provide certain capabilities, they would surely be justified in rejecting an authority’s legitimacy if those capabilities were not provided. If a constitution is just, it can support the legitimacy of the political system as a whole.

Much of the above is remarkably similar to Aristotle’s common good, which holds the end of authority as promoting the common good, understood as the flourishing of each person under the authority. The efficacy of an authority in promoting the common good provides sufficient reason for their legitimacy. The similarities between Aristotle’s common good and Nussbaum’s capabilities approach is unsurprising given the influence of Aristotle on Nussbaum’s thinking. Nussbaum writes approvingly that Aristotle’s writings on human flourishing were intended as a guide for political planners,\(^\text{141}\) and that he saw the role of government as ‘to make all citizens capable of leading a flourishing life in accordance with their choice.’\(^\text{142}\) She writes, the idea of the capabilities approach ‘is that, once we identify the most important functions of human life, we are then in a position to ask what social and political institutions are doing about them. Are they giving people what they need in order to be capable of functioning in all these human ways?’\(^\text{143}\) While Nussbaum does not extend these obligations to GGIs, it is not a stretch of her theory to replace ‘social and political institutions’ with the conception of ‘political authorities’ and thus include GGIs.

Moreover, in many ways Nussbaum’s list is similar to notions of universal human rights. The capabilities approach and universal human rights both aim to ensure people are able to live lives worthy of human dignity. Where they differ is in securing rights and capabilities to people. Nussbaum argues the essential dignity of all people creates obligations to provide ‘affirmative material and institutional support, not

\(^\text{139}\) Ibid., 769-770.
\(^\text{141}\) Nussbaum, Creating Capabilities, 125.
\(^\text{142}\) Ibid., 128.
\(^\text{143}\) Nussbaum, ‘Social Justice and Universalism’, S53.
simply a failure to impede’. She contends the capabilities approach makes clear what it is to secure a right to someone by providing a benchmark. This is one clear advantage of the capabilities approach in the context of legitimacy. While some accounts of legitimacy may aim at social justice or securing human rights to individuals by prohibiting particular actions, the capabilities approach secures human rights to individuals in a positive way, leaving behind individualist self-sufficiency principles that motivated Enlightenment notions of negative rights. There is also an important regard in which the capabilities and their promotion do not have to be understood in legal terms or as Hohfeldian rights. This is important when we think about what people are able to do and because the components that go into capability are not only legal, they can also be cultural, driven by policy, and so forth. It is in these additional areas, outside traditional directive-giving laws that GGIs often operate and so using the capabilities approach as a standard for legitimacy is particularly useful for these actors.

Conclusion

The conception of legitimacy developed in the previous chapter holds that an authority is legitimate when it has the capacity to interfere in the lives of people under its authority, where there is sufficient reason or value in that authority holding that capacity. This leads to the question: what reason of value is sufficiently good to justify a political institution’s authority? Throughout this chapter I have considered a number of responses to this question. I argued one possible good that can justify GGIs’ authority is to promote the necessary enabling conditions for human flourishing. To provide content to the notion of enabling conditions of human flourishing, I suggested the use of Nussbaum’s capabilities approach and her list of ten fundamental capabilities. The next task is to determine how this theory could be applied to real world political institutions in practice.

\[\text{\textsuperscript{144}}\text{Nussbaum, ‘Capabilities as Fundamental Entitlements’, 38.}\]
\[\text{\textsuperscript{145}}\text{Ibid. See also, Martha Nussbaum, \textit{Frontiers of Justice}.}\]
Chapter III – From Theory to Practice: The Case of the International Monetary Fund

In the previous two chapters I discussed the theoretical aspects of legitimacy, including its definition and the normative standards which can be used to assess an authority’s legitimacy. I argued that a global governance institution (GGI) is legitimate when it has the capacity to effectively promote the necessary conditions for human flourishing. I proposed using Martha Nussbaum’s ten capabilities as a proxy for the necessary conditions. The capabilities therefore can act as a framework for assessing a GGI’s legitimacy, by considering how effectively a GGI promotes the capabilities.

This chapter illustrates the applicability of this theory to GGIs – I shall call it ‘the Capabilities Framework’ – by using it to assess the legitimacy of International Monetary Fund (IMF). The IMF, like many other GGIs, is alleged to be experiencing a crisis of legitimacy. As I show in greater detail below, the IMF meets each of Nicole Roughan’s descriptive criteria for a public authority, which indicates the IMF’s authority has standard descriptive features. Thus, the question of the legitimacy of the IMF’s authority is broadly representative of the common problem of GGIs’ legitimacy. The IMF is a particularly interesting case because of the extensive literature about its legitimacy. Since its inception with 29 members at the Bretton Woods conference in 1944, the Fund has played an influential role in global economic governance and development. The Fund’s extensive influence has made it the subject of intense scrutiny and criticism, culminating in the perception that the IMF is undergoing a crisis of legitimacy. Despite this intense scrutiny, to date, the literature on the Fund’s legitimacy has been inconsistent. Some critiques focus on the Fund’s democratic deficit, others on the its alleged interference in members’ sovereignty

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and others on the expansion of the Fund’s roles beyond those that the framers originally intended. Others still argue that the Fund’s governance structure is unfair, unrepresentative and unaccountable; and that it has been too influenced by ideology, sometimes creating more harm than good. Few, if any of these critiques adopt a framework of legitimacy that adequately captures all the competing concerns; nor do they point to areas for reform based on consistent conceptual reasoning, often slipping between the normative and the descriptive. In this chapter I assess the explanatory and normative power of the Capabilities Framework for determining the of legitimacy of the IMF, as an alternative to the theories currently available in the literature.

Given the nature of GGIs (that they are never sovereign, that they work alongside state governments and often other GGIs and that they generally do not issue content independent, exclusionary reasons for action), an important step in assessing their legitimacy is to determine the extent of their responsibility and capacity to promote the capabilities – the enabling conditions for wellbeing. The principle of specialisation in international legal theory, discussed in the previous chapter, indicates it is neither practical nor desirable for every GGI to be responsible for promoting every condition for human wellbeing. Instead GGIs should align the focus of their activity with particular capabilities, depending on their functions. Thus, a GGI is legitimate when it effectively promotes the capabilities (understood as the enabling conditions for wellbeing) that appropriately fall under its specialisation. Consequently, to assess the Capabilities Framework and the legitimacy of the IMF, I develop specific steps to determine which of Nussbaum’s ten capabilities a GGI should be responsible for promoting. After applying these steps to the IMF, I consider its efficacy in promoting the capabilities by assessing the Fund’s performance of its roles

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and policies, including how its roles have developed over time. In doing so, I make sense of the critiques listed above by re-casting them within the Capabilities Framework.

The ensuing discussion demonstrates how the theory, developed in the previous two chapters, could be applied to real political institutions. The study shows that the Fund’s original purposes can be broadly interpreted as intending to promote at least some of the necessary conditions for human wellbeing but that the Fund has often been ineffective in achieving its purposes. The reason for its inefficacy is largely to due to its focus on technical economic factors, rather than on people’s wellbeing, seen particularly in the Fund’s historical commitment to the Washington Consensus. The Washington Consensus is an ideological approach to economics characterised by a commitment to free markets, privatisation of industry and an aversion to redistributions of wealth.\(^9\) For the IMF, the Washington Consensus refers to a set of policy responses to economic and financial crises, including structural adjustments, privatisation of industry and fiscal austerity.\(^10\) Only by changing its policy paradigm to better align with the capabilities approach, and by working more cooperatively with members and communities in member countries, can the Fund improve its legitimacy. To do this, the Fund should update its Articles of Agreement to make clear its primary purpose is the promotion some of the enabling conditions for human wellbeing through promoting good and stable economic conditions.

**Applying Theory to Practice**

Before we can assess a GGI’s legitimacy, it is instructive to consider two preliminary questions: first, does the question of legitimacy actually apply? Second, does the overarching purpose of the institution align with promoting human wellbeing? If there is a negative finding for either of these questions, we will not need to undertake any further analysis.

Questions of political legitimacy only apply to political/public authorities, so an institution must be a political/public authority for us to consider its legitimacy. For a GGI to be a public authority, it must hold the capacity to affect people’s lives and must meet Roughan’s criteria of public authority. In the case of the IMF the question of legitimacy does indeed apply because it is a political authority. Historically, and

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as I will discuss in greater detail below, the Fund has had extensive capacity to affect the lives of individuals. The Fund also meets Roughan’s criteria. As discussed in the introduction, Roughan defines public authorities as, ‘governing bodies/institutions, including both legal and political institutions... [that operate] across state and non-/supra-/intra-/inter-state locations.’ The IMF is clearly a governing body. It further possesses Roughan’s four distinguishing features of public authority as follows:

i) the IMF is an institution involved in governance that operates across states

ii) The IMF’s Articles of Agreement (its formal basis) are public

iii) Whether its subjects are defined as member states or as people within member states, the IMF’s connection with its subjects is impersonal. This is because the rules governing IMF finances are applied to all members and there is no individual or body within the IMF with the capacity to set different rules for different subjects.

iv) The IMF’s interactions with other public authorities are formalised through a number of mechanisms including its Articles of Agreement and Letters of Intent.

Therefore, the Fund can be considered to be an authority to which the question of legitimacy applies.

The second question reflects the argument of chapter 2 – that the primary purpose of political authority is to promote the enabling conditions for human wellbeing. To address the second question, whether the Fund’s overarching purpose aligns with promoting human wellbeing, we can consider the implicit and explicit purpose(s) for which it was established. The IMF was founded in response to the problem of uncoordinated monetary policy. This was an international collective action problem which caused significant suffering to millions of people globally, exacerbated the Great Depression and arguably contributed to the outbreak of World War II. Thus, one of the core aims of Bretton Woods was to create an international monetary system that would prevent or lessen the severity of crises such as the Great Depression.

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11 The four features are: (i) an authority must be institutionalised; (ii) their formal basis must be public; (iii) their connection with its subjects must be impersonal; and (iv) their interactions with other public authorities are formalised. Nicole Roughan, Authorities: Conflicts, Cooperation, and Transnational Legal Theory (Oxford: Oxford University Press, 2013), 28-29.

To support this implicit aim, the Fund’s purposes were developed as follows:

i) To promote international monetary cooperation...

ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

iii) To promote exchange stability...

iv) To assist in the establishment of a multilateral system of payments... [and] elimination of foreign exchange restrictions that hamper growth of world trade.

v) To give confidence to members by making... resources... temporarily available... thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.

vi) ... to shorten the duration and lessening the degree of disequilibrium in the international balances of payments of members.13

These purposes do not explicitly mention human wellbeing or even political stability: instead they are technical in nature. However, the Fund is not ‘purely technical or value neutral’.14 The Fund was designed to regulate a liberal, capitalist trade system. In light of growing income inequality, increasing mental and physical health issues in developed nations, worsening climate change and the breakdown of traditional notions of community, it is possible to question whether supporting such a system is aligned with promoting the conditions for human flourishing. However, the purpose of this thesis is to consider definitions and standard of political legitimacy that can be applied to individual political authorities. While assessing the legitimacy of a political system as a whole is an important undertaking and theoretically many of the principles developed in this thesis could support such analysis, this thesis focuses on legitimacy as a normative concept that applies to political authorities and responds to non-ideal circumstances to guide what we ought to do.15 Consequently I will set aside considerations of the system at large for the rest of this thesis and assume that, for now, we accept the current international

13 Article I of the Articles of Agreement, International Monetary Fund, 1944.
political climate as it is. In this system some degree of regulation to promote international financial stability is a necessary (though not sufficient) condition for human wellbeing. The evidence for this claim is demonstrated by the counterfactual; economic crises have terrible human costs. The Asian Development Bank identifies a number of reasons why economic crises have such a significant impact on human wellbeing:

First… With reduced incomes and higher prices (such as for medicines and school supplies), [households] tend to consume less than what is individually or socially optimal. Second, human capital investment takes time, which becomes scarcer as households work longer hours to cope with falling incomes. Third, the quality and quantity of government-provided social services tend to decline owing to budget reductions... Fourth, as households try to maintain current levels of consumption, they are constrained to reduce human capital investments or even deplete existing stocks.  

Thus, the IMF’s efficacy in promoting international economic stability is arguably integral to supporting the necessary conditions for human flourishing and therefore serve as a normative justification for its authority.

Applying the Capabilities Framework to GGIs

Having established that the question of political legitimacy can be applied to GGIs such as the IMF, we can now determine how we measure a GGI’s legitimacy within the Capabilities Framework. As discussed in chapter 1, I adopt a functionality approach to legitimacy. Functionality approaches consider an authority’s legitimacy by directing us to assess its efficacy in fulfilling its functions. The explicit functions of GGIs are generally set out in the institution’s founding documents. In the case of the IMF, its purposes are explicitly stated in Article I of the Articles of Agreement. However, on the argument set out in chapter 2, the primary goal, or function, of public authority is to promote the enabling conditions for human wellbeing. Thus, if we accept that Nussbaum’s ten capabilities can be used as a proxy for the necessary enabling conditions of human flourishing, we must consider the extent of a GGI’s responsibility and capacity to promote these enabling conditions and what is reasonable to expect of it. This requires, first,


17 An important caveat, which I will discuss in greater detail in the following chapter, is that the means the IMF uses to promote financial stability must not inhibit other conditions for human flourishing.
an understanding of a GGI’s area of specialisation as well as its explicit functions; and second, to align its specialisation and functions appropriately and fairly with particular capabilities.

Finding a GGI’s Specialisation

As discussed in the previous chapter, international law has a number of principles to interpret the scope of political institutions’ authority, including that of expressly attributed powers and the principle of implied powers. These principles require GGIs to operate within pre-determined areas of defined expertise, also known as their specialisation. Under certain conditions, and by applying the principle of implied intent, a GGI’s specialisation can adapt to meet the changing needs of the international community. However, regardless of how it adapts, a GGI’s specialisation tends to be in areas in which it is specifically constituted to work and ideally is best placed to govern. For example, the IMF was constituted for the purpose of promoting international monetary stability and is arguably particularly well placed to fulfil this role. Once a GGI’s specialisation is established, we can determine which of the capabilities it should be responsible for promoting by aligning its functions with the most appropriate capabilities. To determine a GGI’s specialisation we can assess its purposes (as stated in its founding documents) and functions, as well as the evolution of the purposes and functions over time. This general approach can be distilled into the following steps for determining a GGI's specialisation:

i) Assess how the purpose(s) have developed over time and determine whether the authority is still required to manage the problem that motivated its establishment.
   • In some circumstances a problem may be completely resolved or change so dramatically that the original institution can be disbanded and, if necessary, a new institution can replace it.

ii) Consider the authority’s functions, how they have developed and determine if they are appropriate to address the problem for which the institution was designed to address.
   • If the authority’s functions were misaligned with the problem, it is unlikely the authority would be able to adequately address the problem.

iii) Based on the authority’s purpose and functions, determine the authority’s specialisation.

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18 These conditions may include, for example, the consent of members, changes to the constituting documents, and so forth.

19 See ‘Article I: Purposes’ of the Articles of Agreement, International Monetary Fund, 1944.
Determining the International Monetary Fund’s Specialisation

i) Assess how the purpose(s) has developed over time and determine whether the authority is still required to manage the problem that motivated its establishment.

Some argue that the IMF’s role has changed dramatically since it was established. Certainly, the collapse of the par-value system in 1973 eliminated the Fund’s main role of overseeing the international monetary system.\footnote{Margaret Garritsen de Vries, *The IMF in a Changing World: 1945-85*, (Washington DC, International Monetary Fund, 1986), 137.} Despite this abrupt change and other changes to the Fund’s functions, the Fund’s primary goal – to maintain international economic stability and prevent severe economic crises – remains the same. The disastrous consequences of the GFC demonstrate that the world still needs an institution with that purpose. Thus, an authority like the IMF is still needed.\footnote{For further discussion on beneficial roles the IMF could play, see Barry Eichengreen and Ngaire Woods, ‘The IMF’s Unmet Challenges’, *Journal of Economic Perspectives* 30 (2015): 32.} Whether this role should be fulfilled by the IMF or another institution depends on the IMF’s efficacy.

\[\text{ii) Consider the authority’s functions and how they have developed. Are these functions necessary to support the Fund’s purposes?}\]

The Fund’s functions include research, surveillance, policy advice, tutelage and lending.\footnote{For further discussion of the IMF’s original roles see Anne O. Krueger, ‘Whither the World Bank and the IMF’, *Journal of Economic Literature*, 36 (1998): 1983.} The functions are interrelated. For example, the Fund’s research influences its policy advice, surveillance, tutelage and lending functions by setting the paradigm through which the Fund undertakes its activity. Each of the functions, if practiced well, could support the Fund’s overall purpose to maintain international economic stability and prevent severe economic crises.

**Research**

The Fund conducts extensive macroeconomic research, which is largely disseminated through its journal, *IMF Staff Papers*.\footnote{Rogers, *The IMF and European Economies*, 5.} IMF research can either support or hinder the Fund’s main purpose. In the first few decades of its life, the IMF developed a reputation as a world leader in economic policy, contributing to ‘best thinking’ in economics.\footnote{Krueger, ‘Whither the World Bank and the IMF’.} This reputation added weight to its other functions, particularly its policy advice, and arguably made it more effective in its surveillance and lending functions. However,
throughout the 1980s and 1990s in particular, the Fund became one of the strongest proponents of the Washington Consensus, supported by its research. As I will discuss in greater detail below, this commitment to the Washington Consensus undermined the IMF’s efficacy by reducing respect for the Fund and detracted from its goal to lessen the severity of the economic crises of the 21st century.

**Surveillance**

The Fund undertakes both bilateral (between the Fund and a member state) and multilateral surveillance (of regional economies and the global economy), which are both necessary to prevent economic crises. Through bilateral surveillance, the IMF receives reports from member states and reports on the health of their economies. In its multilateral surveillance function, the IMF oversees the health of the global economy. The primary purpose is to enable the Fund to predict and lessen the severity of economic crises. Both the bilateral and multilateral surveillance roles have been extended in response to economic crises.\(^{25}\)

**Policy Advice**

The Fund’s policy advice role is closely related to its surveillance function and consists in making recommendations when it reports on macroeconomic matters. It advises in the areas of exchange rates, monetary, fiscal, and financial policies.\(^{26}\) Although member countries are free to ignore IMF recommendations, both high and low-income countries take IMF recommendations seriously, viewing these as an opportunity for an economic health check.\(^{27}\) So long as the advice is accurate, this function can contribute to the Fund’s primary purpose.

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\(^{27}\) Haynes, ‘Overseeing the International Financial and Monetary System’, 294.
Tutelage

In its tutelage role the Fund accepts civil servants from member states to work alongside IMF economists and study at its institute.\textsuperscript{28} Such training can have far reaching effects,\textsuperscript{29} with some arguing the IMF can be said ‘to have a direct and significant influence over its member nations through the expertise they gain from the IMF’s dissemination and training apparatuses.’\textsuperscript{30} However, the IMF’s tutelage function has waned in recent years.\textsuperscript{31} Member countries now have the experience and the expertise to train new civil servants or often send them to foreign universities and so no longer need to send them to the IMF. Consequently, this role no longer seems necessary for the Fund to fulfil its primary purpose.

Lending

The Fund is the ‘lender of last resort’ for member states. This function aims to support economic confidence and thus prevent economic crises.\textsuperscript{32} When the Fund was established, private financial markets were relatively underdeveloped. This meant the Fund’s share of global wealth was considerably higher than it is now, giving it greater capacity to affect economic conditions through its resources. Following the collapse of the Bretton Woods system, lending became the Fund’s main activity,\textsuperscript{33} primarily to developing nations.\textsuperscript{34} By the 1980s, private financial markets had grown significantly, reducing the Fund’s capacity to influence money markets. In response, the IMF increased the conditions it places on loans. I will discuss the consequences of this in greater detail below. For now, it is arguable IMF lending can contribute to a sustainable and healthy financial system and is therefore instrumental to supporting human wellbeing.

\textit{iii) Determine the authority’s specialisation.}

The analysis of the Fund’s purposes and functions above shows that the Fund’s specialisation is largely technocratic, focused on economic, monetary and fiscal issues. Applying the international legal

\textsuperscript{30} Rogers, \textit{The IMF and European Economies}, 6.
\textsuperscript{32} Article I, section v, Articles of Agreement of the International Monetary Fund, 1944.
principles of expressly attributed powers and implied powers, the Fund can and should act in areas related to economic, monetary and fiscal matters, but should refrain from providing advice on policy areas outside this narrow technical specialisation. However, a focus on economic matters naturally brings the IMF into discussions about how member states should manage their budgets, which often leads it to interact with broader policy areas. I examine the implications of this scope creep in greater detail below.

Aligning Functions with the Capabilities

The next step is to determine which of the capabilities the IMF could be responsible for promoting, either directly or indirectly. Keeping in mind that a GGI’s legitimacy depends on its capacity to promote the necessary enabling conditions for human wellbeing and that Nussbaum’s capabilities can be used as a proxy for the conditions for wellbeing, we can consider the extent to which the IMF achieves this end through the promotion of particular capabilities.

There are a number of possible ways to determine which capabilities fall within a particular GGI’s specialisation. For example, we could analyse each of the capabilities and consider whether, in the course of the authority’s work, it is reasonable to expect that the authority could (in the sense of capacity), affect the conditions of that capability. This analysis should consider the GGI’s specialisation, its political and economic context, its interactions with other authorities and the remit of other authorities working alongside it. Strong economies can be helpful in providing the resources necessary for some of the capabilities. Consequently, in theory, the IMF can indirectly support governments to deliver many of the capabilities by supporting members’ economic development. Another approach is to consider which capabilities would be negatively impacted if the authority failed to fulfil its goals, or failed to consider wellbeing when pursuing its goals.

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35 The Fund could also indirectly support the capabilities through its research, policy advice and lending functions. For example, the IMF could quantify the benefits of promoting the capabilities, to influence its policy advice and lending functions. However, such an approach places the economy as the ultimate goal. Such an approach is at odds with Nussbaum’s central argument that the capabilities should be promoted for every single person because that is what human dignity requires. Nevertheless, while the IMF deals with countries that are focused on economic growth, this may be a useful though imperfect tool to influence them.
In this section I assess which capabilities the IMF should be responsible for promoting by considering the following questions in relation to each of Nussbaum’s capabilities:\(^{36}\)

(i) Does this capability fall directly under the GGI’s specialisation?

(ii) Is it reasonable to expect that the authority could affect the conditions of this capability in the regular course of its work?

(iii) Would this capability be negatively impacted if the GGI failed to fulfil its goals?

Any answer to question (ii) should consider which other authorities may be responsible for promoting this capability and how they interact with the GGI, as well as the remit/specialisation of those authorities. In the case of the IMF, member countries have overlapping and greater responsibility for promoting the capabilities, as their specialisation is much broader and more extensive than any GGI. In some instances, other GGIs, such as the World Bank or the World Trade Organisation, may also hold overlapping responsibilities. Similarly, the political and economic context may affect a GGI’s capacity to promote the capabilities. However, I have excluded political and economic considerations in the following discussion, as these conditions vary considerably in each situation. Nevertheless, these are important considerations for assessing the overall efficacy of a GGI, which I come to in the next section.

The three questions above are designed to help us determine the extent to which the IMF should be responsible for promoting each of the capabilities, which act as proxy for the enabling conditions of wellbeing. The three questions can be applied to the Nussbaum’s capabilities as follows.\(^{37}\) I have underlined the section of the capability that may be relevant to the IMF. Where possible, I have grouped the three questions, as the answers to each sometimes overlap.

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely.

   (i) *Does this capability fall directly under the Fund’s specialisation?*

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\(^{36}\) To clarify, when I write the IMF is responsible for promoting the capabilities, I do not mean the IMF alone is responsible. By their nature all GGIs interact with other authorities and operate in areas in which other authorities also have jurisdiction. This is what Roughan describes as a ‘plurality of authority’, Roughan, *Authorities: Conflicts, Cooperation, and Transnational Legal Theory*. Consequently, GGIs never have exclusive responsibility for promoting particular conditions for human flourishing.

\(^{37}\) I have not used the full quote for the sake of brevity. For the full list, see Martha Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’ *Feminist Economics* 9 (2003): 41-42.
The Fund’s specialisation is focused on economic, monetary and fiscal issues. Life does not directly fall under this specialisation.

(ii) Is it reasonable to expect that the authority could affect the conditions of this capability in the regular course of its work?

Given the responsibilities of national governments and other GGIs, such as the World Health Organisation, it is not reasonable to expect the IMF to have a meaningful impact on the conditions for this capability in the regular course of its work.

(iii) Would this capability be negatively impacted if the IMF failed to fulfil its goals?

If the IMF fails badly enough, it can negatively impact this capability, as shown in post-GFC Greece. The Troika’s first bailout, to which the IMF contributed, occurred in May 2010. In the following two years, rates of suicide in Greece increased by one-third.38

2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.

   (i) Bodily Health does not directly fall under the IMF’s specialisation.

   (ii) It may be reasonable to expect the IMF to influence this capability through its surveillance and lending functions. A government is better able to provide nourishment and shelter to its residents if it has a healthy economy and so IMF surveillance may assist. Additionally, the Fund can conceivably structure its economic adjustment programs to promote the necessary conditions for bodily health.

   (iii) This capability is negatively impacted when the IMF fails to predict and lessen the severity of economic crises. For example, between 2014 and 2015 44% of Greeks lived below the poverty line and around 20% of Greeks could not afford their daily food requirements.39

3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence…


(i) This capability is focused largely on negative rights and is dependent on laws and cultural practices. Such laws and cultural practices do not directly fall under the IMF’s specialisation.

(ii) It is unlikely the Fund would be reasonably expected to affect this capability in its normal activities.

(iii) As with the previous two capabilities, the recent experience of Greece indicates that failure to prevent or lessen the severity of economic crises is correlated with increased rates of domestic abuse, a clear harm to bodily integrity.

4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason... informed and cultivated by an adequate education...

   (i) This capability falls outside the IMF’s specialisation.

   (ii) Like the previous capability, this capability is most strongly influenced by legal and cultural protections. However, adequate education requires funding and so may be indirectly influenced by the IMF’s surveillance and policy advice. Nevertheless, the IMF could not reasonably be expected to directly influence this capability in its normal activities.

   (iii) As with all previous capabilities, IMF failure to prevent and lessen the severity of economic crises can negatively impact access to adequate education.

5. **Emotions.** Being able to have attachments to things and people outside ourselves... Not having one's emotional development blighted by fear and anxiety.

   (i), (ii) and (iii) ‘Emotions’ fall outside the IMF’s specialisation. While economic downturns create fear and anxiety, it is unlikely the Fund would be reasonably expected to affect this capability in its normal activities.

6. **Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life.

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(i) Practical Reason falls outside the IMF's specialisation.

(ii) and (iii) To the extent that practical reason requires an education, and to the extent that the IMF can influence education through its policy advice and lending functions, the IMF may be able to promote this capability. However, the link between the Fund’s specialisation and this capability is so thin that it should not be considered part of the Fund's responsibility.

7. **Affiliation.**

   A. Being able to live with and toward others.

   B. Having the social bases of self-respect and non-humiliation.

   (i), (ii) and (iii) As with the third capability, bodily integrity, this capability is most strongly influenced by legal and cultural protections, which are outside the Fund's specialisation. It would not be reasonable to associate this capability with the Fund.

8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.

   (i) and (ii) As with Capability 3 and 7, 'Other Species' is most strongly influenced by legal and cultural protections, which are outside the Fund's specialisation. It would not be reasonable to associate this capability with the Fund.

   (iii) Nevertheless, the Fund’s historical emphasis on privatisation, foreign direct investment and trade can have negative consequences on the environment, with more trade creating greater carbon footprints and increased exploitation of the natural environment.

9. **Play.** Being able to laugh, to play, to enjoy recreational activities.

   (i) Play is outside the IMF’s specialisation.

   (ii) and (iii) To the extent that funding is necessary for some recreational activities, such as establishing and maintaining public parks and stadiums, the IMF may influence this capability through its policy advice and lending practices.

10. **Control over One's Environment**

    A. **Political.** Being able to participate effectively in political choices that govern one's life...

    B. **Material.** Being able to hold property... having the right to seek employment...

    (i), (ii) and (iii) – Part A: The IMF has the capacity to directly influence people’s capacity to participate in the decisions that govern their lives, both through engaging stakeholder in its own
decision-making processes and in its influence over member governments. There is extensive research into both IMF engagement with member governments\textsuperscript{42} and with local civil society. I will discuss the Fund’s efficacy in this area in greater detail below.

(i), (ii) and (iii) – Part B: relate to legal and cultural practices that are outside the Fund’s specialisation.

This analysis indicates that the Fund’s purposes and functions are not well aligned with promoting the capabilities. The IMF has the capacity to directly influence (and therefore is clearly responsible for promoting the conditions of) only one of the capabilities – namely Control over One’s Environment. A possible explanation for this lack of alignment is that the Fund was designed to be a technocratic institution, to support governments in areas of monetary and fiscal policy. Though the Fund was created to avoid the human suffering associated with the Great Depression and World War II, any focus on promoting the conditions of human wellbeing is lost in its stated purposes. Consequently, the IMF’s stated purposes and functions are not easily aligned with the capabilities.

The analysis also shows that in many instances, the IMF can indirectly affect the conditions of some of the capabilities. This influence is most easily observable through the significant negative impacts on the capabilities when the Fund fails to effectively fulfil its functions. For example, though the IMF is not directly responsible for promoting the capability of Bodily Health and Bodily Integrity, it can indirectly affect this capability if it fails to predict or lessen the severity of financial crises. The Fund thus operates in many areas outside its specialisation and is far more influential than the technical nature of its purposes might suggest. If the Fund is to enhance its legitimacy, its responsibilities for promoting the necessary conditions for wellbeing should be proportional to its influence. The IMF, therefore, should be responsible for considering and mitigating the effects of its policies on all those capabilities which it can negatively impact. To ensure its explicit responsibilities and functions reflect its true influence, the Fund’s Articles of Agreement should be amended to include the goal of promoting the conditions for human wellbeing. Such an amendment would explicitly link the Fund’s legitimacy to its efficacy in promoting the enabling conditions for wellbeing and thus expand its responsibilities to reflect its true influence.

The IMF’s Legitimacy

Given that the Fund’s explicit functions only loosely align with Nussbaum’s capabilities, we can consider the Fund’s legitimacy on a more basic task-efficacy account, while retaining a focus on the ultimate task of promoting the necessary conditions for human flourishing. This approach can assist in making sense of the widely held belief that the IMF has a legitimacy deficit.⁴³ Though this critique has become less prevalent since the GFC, concerns over the IMF’s legitimacy remain.⁴⁴ As stated above, the literature identifies several sources of the deficit, including unfair and unequal representation of members within the Fund,⁴⁵ the Fund’s governance arrangements,⁴⁶ its alleged interference in members’ sovereignty,⁴⁷ scope creep into areas outside its original specialisation,⁴⁸ and the influence of the Washington Consensus on lending practices.⁴⁹

In this section I argue that the Fund does indeed have a legitimacy deficit. However, I depart from the literature and argue the primary source of this deficit is its decades-old failure to hold people’s wellbeing at the centre of its work. This failure contributes to each of the common critiques in the literature and is visible through the outcomes of IMF activity. A second and related source of the Fund’s legitimacy crisis is its inefficacy in fulfilling many of its primary purposes and functions (this is based on a task-efficacy assessment). Though the IMF’s functions are only loosely associated with the capabilities, the functions can nevertheless be understood as instrumental for human wellbeing, as they provide or affect necessary but insufficient conditions for wellbeing. Consequently, the Fund can enhance or diminish its legitimacy through its functions.

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⁴⁴ See for example, Eichengreen and Woods, ‘The IMF’s Unment Challenges’.
⁴⁵ Dijkstra, ‘Supranational Governance and the Challenge of Democracy’.
⁴⁸ Frenkel, ‘Current Problems with the IMF and Challenges Ahead’.
⁴⁹ Stiglitz for example argued that in East Asia, all the IMF was make the ‘recessions deeper, longer, and harder’. ‘The Insider’. See also Woods, *The Globalizers*. 
The Washington Consensus and IMF Bias in Research, Policy Advice and Tutelage

The IMF’s roles in research, policy advice and tutelage have proven to provide an effective, subtle means of influence, a form of soft power for the IMF. As with all exercises of power, the outcomes of these functions should be assessed against their contribution to the necessary conditions for human flourishing and against the efficacy with which they are fulfilled. As stated above, these functions are meant to assist members to develop economic and fiscal policies. In practice, the Fund has used its research, policy advice and tutelage functions to establish and promote its policy paradigm. Many scholars, economists and commentators are critical of the IMF’s execution of its research, policy advice and tutelage functions, asserting the Fund is biased and dogmatic in its adherence to the Washington Consensus. Rogers, for example, contends the Fund uses its research as a means to promote its underlying ideological views on economic management. The Meltzer Report, commissioned by the US Congress, found that many economists viewed IMF ‘forecasts [as] biased and inaccurate and that the IMF places excessive emphasis on short-term forecasting.’ Barnett and Finnemore persuasively demonstrate the bias in the Fund’s research and policy models. They highlight early and influential research by Fund economist Jacques Polak, which assumed balance of payments issues should be resolved by making adjustments in deficit nations. An alternative way of diagnosing the problem would be to focus on insufficient local demand in the surplus nations or exogenous shocks, such as the GFC, that might affect a country’s balance of payments in the short term. The way problems are framed necessarily changes the range of possible policy responses. For this reason, the Fund’s proposed solutions have not been ‘purely technical or value neutral’, instead ‘they aimed to reconstitute... economies to conform with the market-dominated models that have become known as the Washington Consensus.’

51 See for example, Rogers, The IMF and European Economies.
52 Joseph Stiglitz, ‘The Insider’.
54 Rogers, The IMF and European Economies, 5.
57 Ibid., 47. Woods also supports this view and provides a plausible reason for this bias, arguing that the IMF has chosen to focus on deficit states because it is easier to deal with domestic issues in one country rather than structural issues in the global economy. Woods, The Globalizers, 42-43.
Though the Fund has begun to move away from the Washington Consensus in recent years, some scholars argue the Washington Consensus continues to play an influential role, even after the GFC.\textsuperscript{58} That the Fund has a policy paradigm is not in itself a problem. All institutions necessarily adopt an ideological paradigm to interpret the world and solve problems. The problem for the IMF is the relationship between its stated purpose and functions, its historical policy paradigm, its capacity to influence members and the direct and indirect outcomes its policy paradigm produces.

**Ramifications for IMF Efficacy**

Perceptions of bias have diminished the IMF’s role in global governance, its capacity to influence members, and therefore its efficacy.\textsuperscript{59} As discussed in the introduction, I do not adopt a descriptive account of legitimacy which relies on people’s perceptions of an institution’s legitimacy. However, from a practical perspective, perception of legitimacy can affect a GGI’s efficacy. As concerns over Fund bias gained prevalence, countries began to stop borrowing from the IMF, leading to staff retrenchments in the early 2000s and diminished overall capacity.

Moreover, despite its recent key role during the GFC, other trends in the last two decades suggest the IMF’s influence is being undermined by the emergence of wealthy developing countries, such as the BRICS (Brazil, Russia, India, China and South Africa), and by the establishment of new financial institutions in the global south.\textsuperscript{60} Rogers argues that strong emerging economies, particularly China, pose a threat to the IMF’s policy advice and lending roles by making other developing countries question the IMF’s expertise in economic development. That China has developed so rapidly and so successfully without adhering to Washington Consensus principles not only sets an example for other nations to follow, but also undermines the IMF’s role as policy expert. Wealthy developing countries also pose a threat to the IMF by amassing large amounts of foreign reserves. These large foreign reserve holdings allow wealthy emerging countries to defend their economies against financial shocks and currency crises, and to ensure that they do not need to borrow from the IMF. This eliminates the IMF’s capacity to influence their economic structures through the use of conditionality. Finally, some of these emerging

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\textsuperscript{59} Eichengreen and Woods contend the IMF’s effectiveness ‘depends on whether the players see it as competent and impartial.’ Eichengreen and Woods, ‘The IMF’s Unment Challenges’, 30.

economies are now so wealthy that they can act as lenders themselves. The more the BRIC countries conduct bilateral lending, the less developing nations need to draw on the IMF, avoiding IMF conditionality.

Developing countries are not the only ones that the IMF struggles to influence. For decades, commentators have argued the IMF has little influence over its powerful members, such as the US and wealthy EU countries. Woods, for example, contends powerful IMF members may be benefiting from the current global economic structures and so are unwilling to accept Fund advice on their policies. These powerful countries are also more likely to request the IMF delete passage from its reports on their country's economic health, hamstringing the Fund's capacity to provide full and frank advice. More recently, the Fund has failed to influence its European partners over the Greek bailout. The IMF, along with the European Central Bank and the European Commission, make up the Troika, a body responsible for handling the fallout of the GFC in Europe. Since 2012 the IMF has been calling for a restructuring of Greek debt, going so far as to threaten to withdraw from the Troika unless the Europeans agree. Despite this concerted pressure, the IMF has been unable to influence its European partners, to the detriment of the Greek people.

Surveillance

As stated above, the collapse of the par value system drastically changed the Fund’s surveillance role. Though the Fund no longer oversaw the monetary system, from 1973 the Fund’s surveillance role was extended a number of times to include fiscal policies, capital restrictions, interest-rate policies, current accounts, capital accounts, and financial sectors. The aim was to prevent further crises and encourage

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market liberalisation. Yet despite expanded powers in both bilateral and multilateral surveillance, the Fund has consistently failed to prevent, or even predict, economic crises. Between the early 1980s and mid-1990s, there were 41 major banking crises in IMF members states.\textsuperscript{67} In 1994, despite some warnings about increasing interest rates in developed countries affecting capital flows to developing countries, the IMF did not issue any specific warnings about the Mexican Peso Crisis.\textsuperscript{68} In the 1997 the IMF did not foresee either the inception or the spread of the Asian Financial Crisis.

More recently, the IMF failed to predict the GFC. Certainly, the IMF was not the only institution to fail to predict the GFC, yet it was the only institution with a global broad and deep surveillance capacity. As Eichengreen and Woods recently observed, '[it] may be unrealistic to expect that the Fund should have anticipated and warned of the US subprime crisis, the global financial crisis (GFC), and the Greek debt crisis. But the IMF batted 0 for 3 on these three events.'\textsuperscript{69} This represents a significant failure in the Fund’s surveillance role. Since the GFC, the IMF has sought to improve its surveillance practices, acknowledging that it failed to adequately scrutinise advanced economies or to appreciate the relationship between the global macroeconomy and the financial sector.\textsuperscript{70} The trend of these failures indicates that the Fund has serious efficacy issues with its surveillance role, which can have disastrous consequences for individuals’ wellbeing.

**Lending**

Lending is one of the Fund’s most contentious roles. As the lender of ‘last resort’, the IMF is in a powerful position relative to members seeking loans. Members seek Fund assistance only when they experience an economic crisis. As mentioned above, throughout the 1980s and 1990s the Fund drastically increased its use of conditionality. Conditions became both broader in scope (the range of policy areas) and more prescriptive in nature (the degree of change required).\textsuperscript{71}

\begin{itemize}
  \item \textsuperscript{68} Ibid.
  \item \textsuperscript{69} Eichengreen and Woods, ‘The IMF’s Unmet Challenges’, 30.
  \item \textsuperscript{71} Krueger, ‘Whither the World Bank and the IMF’, 1989.
\end{itemize}
Admittedly, it is difficult to assess the efficacy of the Fund’s lending. Members only seek Fund assistance when they are already in crisis; thus, no control group exists to compare the efficacy of Fund assistance. In addition, the Fund operates in a wide variety of politically, culturally and economically complex environments, often interacting with many other political authorities. In these circumstances, how can we assess the efficacy of the Fund’s lending practices? Is it reasonable to expect that the Fund could promote wellbeing through its lending practices? Three possible ways to assess the efficacy of IMF loans are: first, evaluate the outcomes of IMF loans; second consider the effects of loans on national sovereignty (and therefore Nussbaum’s tenth capability – control over own’s environment\(^{72}\)); and third determine if the Fund complied with international legal principles to stay within its specialisation.

### Outcomes of IMF Loans

IMF lending practices have often done more harm than good to borrowing nations. There are numerous examples from the 1980s and 90s in which IMF conditionality was harmful. In Korea, for example, Rogers argues the IMF took a ‘one size fits all’ approach and imposed reforms on Korea’s labour market, corporate governance, and international trade that were not needed.\(^{73}\) Stiglitz concurs, adding, ‘[a]ll the IMF did was make East Asia’s recessions deeper, longer, and harder.’\(^{74}\) This led to the Meltzer Report, which was respected even among conservative supporters of the IMF,\(^{75}\) to conclude, ‘IMF interventions... have not been associated, on average, with any clear economic gains to recipient countries’.\(^{76}\) This view is supported by Woods, who argues that ‘there is little conclusive evidence [that IMF conditionality has]... net positive effect.’\(^{77}\) Even though there is growing recognition within the Fund that it has made a number of errors in the past and that some of its conditions have been too austere, for decades the Fund argued the initial pain from austerity would be short-term and would be necessary to achieve long-term benefits.\(^{78}\)

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72 Nussbaum, ‘Capabilities as Fundamental Entitlements,’ 42.
73 Rogers, 10.
Not only is IMF conditionality frequently harmful, but the IMF’s capacity to manage loans is also questionable. Eichengreen and Woods, for instance, argue the IMF’s frequently delays debt restructuring, which ‘allows private investors to cut their losses and creates moral hazard. When the restructuring finally comes, it is more expensive... and more disruptive to the economy.’\(^{79}\) The efficacy of IMF’s loans is thus another source of its legitimacy deficit, with loans frequently producing negative consequences and moral hazards for borrowing countries. These constitute indirect influences that are not adequately captured in the Articles of Agreement.

*Conditional Loans and People’s Control Over their Environment*

A second consideration is the effect of IMF lending on the tenth capability – *Control Over One’s Environment*. As mentioned above, the tenth capability is the only one that the Fund is directly able to influence. It can do so by engaging with representatives from member governments, civil society, interest groups and individuals in member countries to promote engagement with and feedback on IMF programs. Such action would enhance people’s capacity to participate effectively in the political choices that govern their lives. Yet historically the IMF has not undertaken this engagement; instead it has a long history of encroaching on member’s sovereignty.

Since the 1980s there has been mounting criticism that the Fund encroaches on the sovereignty of member states through its use of conditionality loans. In 1983, John Williamson observed that many critics of IMF conditionality believe it ‘over-rides national sovereignty and perpetuates dependence.’\(^{80}\) Others assert that the Fund takes advantage of the vulnerable position of borrowing nations to force decisions the governments would otherwise avoid – a process that often bypasses domestic political processes.\(^{81}\) Stiglitz, for example, argues that the IMF ‘undermines the democratic process by imposing policies... all the power in the negotiations is on one side – the IMF’s – and the Fund rarely allows sufficient time for broad consensus-building or even widespread consultations with either parliaments or civil society.’\(^{82}\) Woods supports this view, arguing ‘some governments feel they have little choice [but] to


accept Fund… assistance – having resorted to the [Fund] for assistance precisely because they have no alternatives.\textsuperscript{83} Catherine H. Lee further argues that during the Asian Financial Crisis, ‘In effect, sovereignty of a nation embodied within internal management and domestic policies was something that the IMF had decided to modify at a fundamental level, if deemed necessary.’\textsuperscript{84}

These concerns culminated in the Report Meltzer Report finding that one of the principle criticisms of the Fund is:

The use of IMF resources and conditionality to control the economies of developing nations often undermines the sovereignty and democratic processes of member governments receiving assistance. IMF staff often admit (with pride) that the executive branch of borrowing nations likes to use IMF conditions to exact concessions from their legislatures... often... shifting the balance of power within countries in ways that distort the constitutionally established system of checks and balances.\textsuperscript{85}

While the Commission made it clear it did not necessarily endorse this critique, it considered the position serious enough to include in its report to Congress. These concerns indicate serious deficiencies in the Fund’s efficacy in promoting the conditions for the tenth capability.

Importantly, in recent decades the IMF has made some attempts to improve engagement by changing its conditionality guidelines to promote ‘country ownership’ over loans programs. Some argue this has been successful in addressing some of the issues associated with conditionality.\textsuperscript{86} It will remain to be seen if the IMF can improve engagement to give individuals greater control over their environment.

The IMF’s performance efficacy in fulfilling each of the functions discussed above – research, policy advice, tutelage surveillance and lending – can be categorised as patchy at best and detrimental to

Wallace undertake statistical analysis on ‘democratic scores’ of borrowing nations between 1971 and 2007 and find the fears about the impact of IMF loans on these scores is ‘misplaced’ (554).
\textsuperscript{83} Woods, ‘Making the IMF and World Bank More Accountable’, 91. Ruiz Fabri also holds the view that dealings between the IMF and borrowing nations is not a negotiation, stating ‘In effect beneficiary countries have no choice but to comply.’ Ruiz Fabri, ‘Regulating Trade, Investment and Money’, 364.
individuals’ wellbeing at worst. This is a serious indictment on the Fund’s legitimacy and it must make concerted efforts to improve the outcomes it produces if it is to enhance its legitimacy.

**IMF Domain-Creep**

A further issue that undermines the IMF’s legitimacy is its propensity towards domain-creep. Domain-creep refers to the IMF’s tendency to engage in policy matters outside its narrow technical specialisation. This occurs most frequently through the Fund’s lending function, where, in the course of providing budgetary advice to member states, the Fund often sets conditions on its loans that affect policy areas outside its specialisation. This action is in contravention of international legal principles of expressly attributed powers and implied powers.

The extent of the Fund’s domain-creep is contestable. Some argue the IMF framers never intended that the IMF would use its lending capacity to influence the domestic policy decisions of member states. Instead, there were meant to be very few restrictions on loans, making lending somewhat ‘automatic’. The rationale was to provide markets with confidence during economic difficulties and prevent members from engaging in protectionist and ultimately self-defeating practices, as seen during the Great Depression. Admittedly there is some ambiguity surrounding conditionality in the original Articles. Writing for the IMF’s *Staff Papers*, Manuel Guitián highlights this ambiguity, asserting that the provision in Article I (v), which puts ‘adequate safeguards’ on Fund loans, indicates that conditionality was always a part of the Fund’s lending mandate. However, the original Article V (iii), which outlines the conditions governing the use of the Fund’s resources, places only five conditions on the use of IMF resources by member countries. The presence of so few and such specific conditions in the original Articles indicates that the designers of the IMF did not envisage conditional lending beyond these conditions.

Whether the Fund was originally intended to set conditions on its loans, it nevertheless has set conditions in policy areas far outside its specialisation. This point has been highlighted by both external stakeholders

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and senior Fund staff. As early as 1983, C. David Finch, former Director of the IMF’s Exchange and Trade Relations Department, argued that the Fund was not ‘established to give guidance on social and political priorities, nor has its voting system been designed to give it the moral authority to oversee priorities of a noneconomic nature... the Fund has to accept that the authorities of a country are the sole judges of its social and political priorities.’ Such overreach by the Fund raises questions for its legitimacy as it takes Fund operations beyond its appropriate specialisation.

**Governance**

The analysis above has highlighted deficits in the IMF’s legitimacy, based on a task-efficacy account of legitimacy. Where authorities are insufficiently effective, we can consider their governance structures, as these may help the authority to improve outcomes in the future. The relevance of good governance may not be immediately apparent, given that the account I have developed is teleological in nature and thus more closely aligned with output accounts of legitimacy. My account of legitimacy is therefore focused on outcomes and efficacy, and does not necessarily require democracy, fair representation, transparency or accountability. By contrast, good governance can be understood as a form of ‘input legitimacy’. Such approaches generally include considerations of democratic processes, accountability and transparency. Yet, the input-output distinction in conceptions of legitimacy is something of a false dichotomy. Governance structures can contribute to efficacy in a number of ways and act as a ‘safety net’ for political institutions to prevent gross failures of efficacy. For example, one way in which governance structures can contribute to efficacy is by including people in the decision-making process. When individuals and groups are involved in decisions they may be more likely to accept outcomes rather than resist them. Moreover, good and inclusive decision-making processes can contribute directly to the promotion of the tenth capability – control over one’s environment. Consequently, in this section I assess the Fund’s governance arrangements to identify areas for reform that may improve the Fund’s efficacy in promoting human wellbeing.

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91 C. David Finch as quoted in James, ‘From Grandmotherliness to Governance’, 46.
92 As discussed in chapters 1 and 2, a task-efficacy account of legitimacy is consistent with my overall approach to legitimacy, so long as the ultimate task of the authority is to promote the necessary conditions for human flourishing.
The Fund’s governance arrangements are commonly understood to be inadequate. Common concerns focus on unequal representation in its decision-making procedures, difficulties with holding the Fund to account and a lack of transparency in the Executive Board’s decisions-making processes.

Representation

The unequal representation of members and uneven access to representatives on the Executive Board makes it difficult for the Fund to appropriately prioritise the competing interests of members and affects its capacity to promote the wellbeing of all. The IMF’s governance structure includes the Executive Board, the Board of Governors and the Managing Director. The Executive Board (the Board) handles the day-to-day operations of the IMF and consists of 24 Directors, who represent all 189-member countries. The individual Directors are elected by groups of countries or, for some special members, are directly by one member country. The Board of Governors includes representatives from all member countries and meets once per year, making the Executive Board far more influential than the Board of Governors. Voting rights on the Board of Governors and the Executive Board are not even – they are determined by a complicated algorithm, which incorporates a country’s GDP, its ‘openness’ (level of trade with the rest of the world, partially determined by the absence of trade barriers), its economic variability and its foreign reserves. The US holds the largest voting share, at 16.52% of the total vote, giving it veto power over Fund decisions that require a super majority of 85%. China, Japan, Germany, France and the UK are the next largest vote holders. Combined with the United States, these six countries control 42.13% of the total vote.

The uneven representation on the Board means that the vast majority of nations do not have a direct say in the Board’s decision. They must compete with other nations in their cohort for the attention of their

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94 These include the United States, Japan, China, Germany, France and the United Kingdom. See, ‘IMF Executive Directors and Voting Power’ International Monetary Fund, last updated 16 October 2018, https://www.imf.org/external/np/sec/memdir/eds.aspx
95 Ibid.
97 Despite the size of its economy and population, until 2016 China held only 3.81% of the vote. It is now at China’s vote is only 6.09%. For a full list of Executive Board representatives and voting shares, see IMF: https://www.imf.org/external/np/sec/memdir/eds.aspx
representative on the Board. Nations grouped into large cohorts have even less influence over the Director who represents them. More concerning, there is clear development bias in the allotment of voting rights. Developed countries are over-represented (particularly European countries), while developing countries are underrepresented, usually holding fewer voting rights and being grouped into larger cohorts. The consequence of this uneven representation and voting power is that smaller, poorer nations which are most likely to need IMF assistance, have the least influence in how the IMF conducts its business. When representation in the Fund is heavily stacked against small and developing countries, it cannot reasonably be said that the governments, let alone the individuals in these member states, are involved in decisions that affect them. This impotence undermines wellbeing. Conversely, as the Meltzer Report highlighted, the G-7 finance ministers have sufficient voting shares between them that they 'can use the IMF as the instrument' to impose their preferred policies on the rest of the world. That large and powerful nations can exploit the representative inequalities within the Fund and use it as a tool to further their own interests is extremely concerning.

Since the onset of the GFC there have been efforts to reform the IMF’s governance structure to address the underrepresentation of the developing world. In 2010 the IMF’s Board of Governors approved a package of quotas and governance reforms. The aim was to shift ‘more than 6 percent of quota shares to dynamic emerging market and developing countries and more than 6 percent from over-represented to under-represented countries.’ Yet despite the lofty rhetoric surrounding this goal, the changes were not operationalised until early 2016 and remain controversial. Some argue they have not adequately addressed transparency issues or democratic participation. Michael DaCosta, an

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98 See for example, Ruiz Fabri, ‘Regulating Trade, Investment and Money’, 365. See also Vestergaard and Wade, ‘Still in the Woods’, 1-12.
102 Ibid. Italics added.
103 For example, then Managing Director, Dominque Strauss-Kahn, described the changes as ‘the most fundamental governance overhaul in the IMF’s 65-year history’. International Monetary Fund, ‘IMF Executive Board Approves Major Overhaul of Quotas and Governance’, Press Release No. 10/418, 05 November 2010.
104 Tristram Sainsbury, for example, notes that the reforms include only a 2.8% shift in quota share from developed to developing countries. He furthers points to research indicating that it would take a further 5% shift in quotas to reflect the economic realities of 2015. The Interpreter, ‘IMF: Hard yards on reform are still to come’, The Lowey Institute, 23 December 2015, accessed 7 July 2018 from https://www.lowyinstitute.org/the-interpreter/imf-hard-yards-reform-are-still-come. See also The Bretton Woods Project, ‘IMF governance: one step
economics consultant and Chief of the IMF Board Operations Division (2002-2008), argues the reforms represent only ‘relatively modest’ changes. Vestergaard and Wade are more damning in their analysis. Despite the aim to shift voting rights by 6 percent, through close analysis of the proposed changes, Vestergaard and Wade demonstrate that there is only a 2.6 percent shift in quota shares from developed countries to emerging market and developing countries, with the rest of the 6 percent shift coming from a redistribution of quota shares between emerging market and developing countries. This means the reforms leave developed European countries ‘heavily over-represented relative to their economic weight’.

Transparency and Accountability

Historically the IMF’s governance arrangements have not fostered transparency or accountability, which has arguably weakened its reputation and contributed to a decline in its influence. Joseph Stiglitz, former World Bank managing director, was highly critical of the Fund’s transparency during the Asian Financial Crisis, writing, ‘with everything going on behind closed doors, it was impossible to know who was the real obstacle to change... The IMF likes to go about its business without outsiders asking too many questions.’ Transparency is important for legitimacy because it can influence efficacy. As Rogers points out, ‘the legitimacy of the Fund’s activities stem, at least in part, from the extent to which those affected by the decisions it makes are able to access and understand the rationale for those decisions.’ In recent years the IMF has taken steps to improve transparency, including publishing more of its research on its website and encouraged governments ‘to permit greater disclosure and publication of policies and agreements made [between those governments and the Fund]’.

However, transparency of data and agreements between the IMF and member states are not the only areas in which the IMF has been encouraged to be more transparent. Unlike the statements of many


107 Ibid.
reserve banks, there is a five-year lag for the publication of IMF board meeting minutes.\textsuperscript{111} This lack of transparency is seen as major problem within the literature. Ngarie Woods, for example, argues that the IMF’s lack of transparency is even more egregious than the absence of mechanisms to make Board members accountable,\textsuperscript{112} while DaCosta argues that increasing transparency of the Board’s activities, including its meetings, decisions, budgets and efforts towards reform, would be good practice.\textsuperscript{113}

Accountability is also a major issue for the Fund. There are a number of factors affecting IMF accountability. One such factor is that there are no external agents capable of holding the IMF to account, such as judges or ombudsman.\textsuperscript{114} The IMF is only accountable to its members and only to the extent that members are able to hold it to account. A further factor affecting accountability is the distance between Directors on the Board and the majority of member states. There is often considerable distance between a member country and its representative on the Board, not only because most Directors represent multiple countries, but also because of the Fund’s location in Washington DC. As Woods argues, this distance, coupled with the absence of any formal mechanisms to assist members to hold their representatives to account, limits the influence any member has over its representative and consequently limits the member’s ability to hold its representative and IMF staff to account.\textsuperscript{115}

Similarly, because the Board of Governors meets only once per year, its capacity to hold the Executive Board and the Managing Director to account is severely limited. Finally, many important decisions of both Boards require a super majority of 85% of the vote, which means the US can veto any decision it dislikes. There are no mechanisms to overturn the decisions of the United States.

Conclusion

The IMF has extensive capacity to affect the lives of ordinary people living in its member states. The IMF’s influence is so extensive that failure to fulfil its functions effectively can negatively affect almost all of Nussbaum’s ten capabilities, which I have used as a proxy for the necessary enabling conditions for human wellbeing. Despite its broad influence, the Fund’s purposes, as set out in its Articles of Agreement,

\begin{footnotes}
\footnotetext[112]{Woods, The Globalizers, 207.}
\footnotetext[113]{DaCosta, ‘IMF Governance Reform and the Board’s Effectiveness’, 242.}
\footnotetext[114]{Woods, ‘Making the IMF and the World Bank More Accountable’, 84.}
\footnotetext[115]{Ibid., 87-88. See also Woods, The Globalizers, 207.}
\end{footnotes}
do not adequately capture or regulate this capacity, focusing instead on narrow, technical economic matters. The Fund’s Articles make no mention of broader goals, such as human wellbeing or even political stability. This is at odds with the conception of legitimacy I developed in chapter 1, which requires that an authority should only hold the capacity to affect people’s lives within a relevant jurisdiction, where there is sufficient reason for it to hold that capacity. The jurisdiction of a GGI is its area of specialisation. Thus, for the Fund to be legitimate, it must act within its specialisation and fulfil functions that are sufficiently valuable to justify its extensive influence. Given that the Fund’s explicit purposes are primarily technocratic, these cannot act as a sufficiently good end to justify its authority.

One way the IMF could improve its legitimacy would be to include a full account of its influence – both its direct and indirect influence – in its Articles of Agreement and measure its efficacy in fulfilling its functions against the ultimate purpose of promoting the necessary enabling conditions for human flourishing. The current failure to recognise, name and govern the full extent of the Fund’s influence has left a vacuum in its values. Without a clear telos in its Articles, the IMF fails to place human wellbeing at the centre of its work. The absence of a telos has freed the Fund to set painful austerity measures as conditions for borrowing nations and to justify the damage to people’s lives by reference to improved economic conditions years later. The prioritisation of economic outcomes over human wellbeing should have no place in any civilised society and should delegitimise an authority with those values. To address these problems, the Fund’s Articles of Agreement should be revised to make it clear that its stated purposes are not ends in themselves but are instrumental to achieving the ultimate goal of political authority – the promoting of wellbeing.

Though the IMF’s functions are not well-aligned with promoting human wellbeing, to the extent that they can promote wellbeing, it is important the Fund is successful in these roles. Yet the Fund has often failed to effectively discharge many of its roles, often missing important changes in the global financial landscape, providing poor or insufficient advice, and adhering too firmly to its historic commitment to the Washington Census.

These problems have been exacerbated by poor governance structures within the Fund. Issues with uneven representation and the concentration of voting rights to powerful member states indicate that the Fund is less likely to take account of the wellbeing of people in small and developing countries, as their interests are underrepresented. Moreover, issues with transparency and accountability no doubt
contribute to the IMF’s waning influence because its role in international economic governance is to a large extent dependent upon its members’ cooperation.

From a normative perspective, the IMF can improve its legitimacy by becoming more effective in promoting, or supporting members to promote, the human capabilities. To achieve this the Fund will have to re-write its Articles of Agreement to place wellbeing at the centre of its work and undertake structural reforms to improve accountability and representation. Improving representation will not only improve outcomes for people by ensuring their needs are represented in the decision-making process, but will also enhance Nussbaum’s tenth capability – control over one’s environment. The IMF will also need to continue to move away from the Washington Consensus and adopt a more pragmatic policy paradigm that supports subjects’ wellbeing. This work has already begun. Fund research is moving away from austerity and its Managing Director, Christine Lagarde, has refused to participate in further bailouts for Greece unless its austerity conditions were softened. The IMF must continue to focus on real, measurable improvements to the quality of life of subjects to ensure its legitimacy.
Conclusion

There is increasing recognition that traditional conceptions of political authority do not reflect the way authority operates in the modern world. Traditional conceptions of authority overly privilege the nation state and, in their focus upon exclusionary reasons for action, do not accurately reflect the complex nature of globalised authority relations. It is in this context that there is enhanced awareness of the interconnectedness and co-dependence of authorities. Transnational authorities, or what I have called global governance institutions (GGIs), rarely issue content independent, exclusionary reasons for action, yet hold the capacity to affect people’s lives in very significant ways. There is accordingly a growing body of scholarship attempting to understand and theorise this phenomenon. Roughan, for example, argues that authorities are increasingly plural, while Buchanan points to the ‘ecological’ nature of modern authority, and Macdonald and Macdonald highlight the ‘liquid’ nature of authority. The conceptions of legitimacy that accompany each of these notion of authority address a similar point, namely that we can no longer rely on state-centric or sovereign-centric conceptions of authority, as modern authority is increasingly understood ‘as a relative power that can be held interdependently’. Thus, in chapter 1 I argued for a conception of legitimacy that was sufficiently broad so that it could be applied to both state authority and GGIs’ authority.

Chapter 2 considered what ends could be used to justify a GGI’s authority. Drawing on the traditions of the common good and adapting it to suit the modern, globalised world, I demonstrated that it is possible to use the promotion of the necessary enabling conditions for human flourishing as the end of GGI’s authority. I further argued that we could adopt Martha Nussbaum’s ten capabilities as a way to understand what the enabling conditions for human flourishing might be.

In the final chapter I discussed the IMF’s role in promoting the capabilities. This discussion showed that often GGIs may not be able to directly affect some of the capabilities, yet may still negatively impact people’s lives if they make significant mistakes. Consequently, if the first principle of legitimacy is that

\[ \text{Nicole Roughan, } \textit{Authorities: Conflicts, Cooperation, and Transnational Legal Theory} \text{ (Oxford: Oxford University Press, 2013).}\]
\[ \text{Allen Buchanan, } \textit{The Heart of Human Rights} , \text{ (Oxford: Oxford University Press, 2013).}\]
\[ \text{Macdonald and Macdonald, ‘Liquid Authority’.}\]
\[ \text{Roughan, } \textit{Authorities} , 8.\]
authorities should promote the necessary conditions for human wellbeing within their domain, the second principle of legitimacy is that all authorities should avoid detracting from each capability, even if the capability is outside their domain. I concluded that the IMF could improve its legitimacy by making a focus on human wellbeing explicit in its founding document. The hope is that if the IMF’s legitimacy is tied to people’s wellbeing, it would engage more with members and civil society to determine what people need. The Fund would also likely avoid a ‘one size fits all’ approach to policy and lending advice, and focus on the specific needs of each country.

Since the GFC the IMF has improved in its technical functions. Recent research has found that the IMF ‘suffered from severe shortcomings in the run-up to the financial crisis, but after the start of the crisis in 2008, IMF surveillance of the euro area greatly improved... By the time the sovereign-debt crisis hit... the IMF was ready to play an influential role. The slow European response meant this was indispensable.’ The Fund must build on these improvements to its surveillance and policy advice, with a focus on the wellbeing of people living in its member states, to continue to enhance its legitimacy.

In assessing a public authority’s legitimacy, it is important to remember that no single policy is completely determinative. Conceptions of legitimacy must be tested by looking to a broad suite of policies, including policies affecting genuinely common goods, such as regulations around clean air and water. Moreover, the historical, cultural and economic context of the authority should be taken into account. Once that is properly understood, we can assess whether the authority is doing what it can reasonably be expected to do to provide the conditions for flourishing, within its given circumstances. We should also consider alternatives. Is there a viable alternative authority (perhaps a different political party or a different international organisation) that may be better able to deliver those services? If there is no alternative authority and the existing authority is doing everything it can within its resource constraints to promote the wellbeing of everyone, then it should be considered legitimate. Finally, the orientation of the authority must always be towards each and every person under its authority.

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In this thesis I have focused specifically on GGIs and excluded the legitimacy of nation states. It is an open question if this theory could also be applied to states. However, if it were, there would need to be two key changes. First, states should promote all ten capabilities in order to be considered legitimate. Unlike GGIs, states have far more extensive powers to affect the lives of their citizens and so it is reasonable that they could affect all ten capabilities. Second, the standard of efficacy should be applied to each political authority within its relevant context and to the extent of its jurisdiction. That is to say, we should acknowledge the limitations that a national government of a poor country may face in promoting the wellbeing of its citizens by asking, given the prevailing conditions, is the government being as effective as it can be in promoting the conditions for flourishing? If so, it is legitimate. If not, we can consider how the government could be more effective and what can be done to encourage it to be so. Depending on the reason for the inefficacy, we should either encourage and support the government to reform or withdraw support.

In the modern world we have better access to resources, education, health care, travel and so forth than at any other point in human history. Yet we see rising rates of income inequality, rising rates of mental illness and the continual decline of the natural environment. One plausible conclusion to draw from this is that global politics must move away from notions of resource scarcity, which promote the idea that another’s benefit will reduce my benefit. This thesis has accordingly proceeded throughout on the assumption that we should focus more on the commonness of our experience and appreciate that when new groups start to do well or better than before, it improves communities and societies for everyone. Simultaneously, we must recognise our deep dependence on the environment for our most basic wellbeing. A teleological conception of legitimacy that focuses on the wellbeing of each and every person within an authority’s jurisdiction is best placed to promote a more considerate, compassionate and sustainable politics.
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Title:
Legitimacy, authority and global governance institutions: a case study of the International Monetary Fund

Date:
2018

Persistent Link:
http://hdl.handle.net/11343/222450

File Description:
Legitimacy, authority and global governance institutions: a case study of the International Monetary Fund

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