Non-governmental organisations, power and legitimacy in international society

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Abstract. Legitimacy is currently a salient topic in the International Relations (IR) literature. In an era of globalisation, discrepancies have emerged between political ideals and the realities of the global distribution of power. One significant aspect of this debate concerns the role and influence of transnational non-governmental organisations (NGOs). This article examines the issue of transnational NGOs’ legitimacy in international society. It is suggested that accusations of NGOs’ ‘illegitimacy’ often rest on a comparison between ‘legitimate’ state power sanctioned by liberal democratic norms, and ‘illegitimate’ non-state power. More pressing than the fact of non-governmental sector’s ‘non-state’ character, however, is the question of how to put effective limits on power per se in international society.

‘Legitimacy’ is currently a salient topic in the international relations literature.1 As Ian Clark has observed, renewed scholarly interest in the concept can be read as indicative of a sense of crisis, or impending crisis, in the system.2 Of course, the legitimacy of the global order has always been contentious: for decades, the gulf in the living standards of rich and poor peoples has inspired thinkers and activists to contest its legitimacy, in the sense of the rightness or fairness of global rules and institutions. Clark is interested in a subtly different problem, however: the question of what legitimacy in a global order might mean in an era of so-called globalisation. In other words, who are the legitimate members of contemporary international or world society, and according to which particular rules or norms should they act in order to be perceived as legitimate?3 As is frequently observed, the developments that are often grouped together under the heading of globalisation have revealed gaping...
discrepancies between political ideals and the realities of the contemporary distribution of power, necessitating urgent reflection on how ideals and practice might be reconciled and new understandings of legitimacy developed.\(^4\)

One important aspect of this debate is the role played by the transnational non-governmental sector, and its impact upon meanings of legitimacy in contemporary international society. Since the late 1980s, the number of non-governmental organisations (NGOs) working across borders has risen sharply. Experts estimate that globally, the non-profit sector is now worth over one trillion dollars a year.\(^5\) Not only are there more transnational NGOs, but the kinds of activities in which they systematically engage have also multiplied. During the past two decades, transnational NGOs have moved beyond traditional relief, campaigning and advocacy activities to take on new roles such as devising and monitoring compliance with ethical standards and codes, engaging with governmental and private sector actors, and contract work for governments.\(^6\) The expanding numbers, roles and influence have prompted a debate about the legitimacy of transnational NGO participation in global governance.\(^7\) Namely, to what extent do transnational NGOs form a ‘legitimate’ part of the global order, and should there be limits – and if so, what kinds – on the ways in which transnational NGOs operate? The issue is a pertinent one, since transnational NGOs have been criticised on various grounds (some more ideologically motivated than others) for being insufficiently accountable, transparent, and representative. The issue of what constitutes legitimacy in a global order thus has important implications for the international non-governmental sector. Or, as Ann Florini has put it, ‘transnational civil society is a piece – an increasingly important piece – of the larger problem of global governance.’\(^8\)

This article examines the issue of transnational NGOs’ legitimacy with a view to identifying the contours of ongoing debates and critiquing some of the assumptions underpinning them. The first part of the article provides an overview of those aspects of the non-governmental sector which have become more influential in recent years. Section two then looks at how recent changes in the global distribution of power are challenging understandings of legitimacy in international relations. Building on this, section three then focuses on the issue of transnational NGOs’ ‘illegitimacy’. Three core arguments are identified, based on claims about procedures, values, and effectiveness. Critically, all three rest on a comparison between legitimate public power sanctioned by liberal democratic norms, and ‘illegitimate’ non-state power. These arguments are then considered further in the last section of the article, which argues that the nature and extent of the ‘crisis of legitimacy’ has been somewhat

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\(^7\) Waddell, ‘NGO Strategies, section 3.

misrepresented due to the state/non-state dichotomy. I suggest that aspects of transnational NGOs' 'illegitimacy' are not so much a consequence of the non-governmental sector's 'non-state' character, than a part of a wider institutional dilemma concerning how to put effective limits on all types of power - public and private, state and non-state - in contemporary international society. Singling out transnational NGOs for criticism risks missing much deeper and pervasive roots of perceived illegitimacy in the global order. The solution to problems of unaccountable power hinges less on differentiating between 'legitimate' and 'illegitimate' categories of membership of international society that are based on distinctions between 'state' and 'non-state' power, than on our ability to design enduring and fair institutions.

A brief definitional note: the umbrella term 'transnational NGOs' is used throughout the article to refer to a range of organisational types, from operational to advocacy organisations. The extensive political and sociological literature on NGOs pays testament to the fact that a variety of structures - whether loosely or hierarchically organised, networked, member-driven or privately funded, independent or linked to government - exist side by side within the non-governmental sector. In addition, the sector is characterised by a medley of political viewpoints and outlooks, from cosmopolitan to fascist, secular humanist to religious fundamentalist. Here, the term 'non-governmental' is used as an ideal category that contrasts to the equally idealised private (market-oriented) and governmental sectors. The term 'transnational' is used to describe organisations that have operations in and across a number of different countries. This article is concerned specifically with the issues raised by the operation of transnational NGOs. The relationship between domestic public, private and non-governmental sectors within states is not touched upon here.

The expansion of the transnational NGO sector

During the past couple of decades, the transnational non-governmental sector has expanded markedly in some aspects. Indeed, certain analysts have hailed an international 'power shift' towards non-governmental actors, and a 'global associational revolution'. The number of non-profit organisations engaged in border-crossing activities and issues is now significantly larger than in previous decades. Michael Edwards estimates, for instance, that over twenty thousand transnational NGO networks are active at the international level, and that 90 per cent of these were founded during the last thirty years. Of course, organised citizen activity has always taken place at the international level, and it would be mistaken to suppose that this expansion is either entirely new or unexpected. Historically, some 'non-state' institutions exercised significantly more power relative to the state than NGOs do


today. Viewed as a whole, however, in recent years the non-governmental sector has become larger, more visible, better organised, and more sophisticated in its relations with political institutions and the media.

An important feature of the transnational non-governmental sector’s expansion has been growing awareness on the part of many NGO staff of the advantages to be gained from greater engagement with policymakers and private corporations on questions of global governance. The commonly held image of the operational NGO providing relief to the suffering is certainly valid, but no longer typical; as Korten points out, many NGOs’ roles and strategies have evolved over time. For example, the first postwar transnational development NGOs were concerned with providing effective relief operations during humanitarian emergencies, such as the supply of food, health care, and shelter. Relief operations were gradually complemented with greater attention to ‘ownership’ and self-help. More recently, some development NGOs have focused more heavily on the detrimental effects of governmental and intergovernmental organisations’ trade and aid policies on developing countries’ economies and societies. A large transnational NGO such as Oxfam International, for instance, now devotes a considerable amount of its energy and resources to campaigning on matters of global economic justice, in addition to its traditional operational role.

Transnational NGOs follow a number of paths when it comes to exercising influence at the international level. One strategy consists of rejecting the status quo altogether, and presenting global social movements as distinct alternatives to the current order. The logic of this ‘rejectionist’ approach is that neo-liberal globalisation has failed to effectively address questions of social justice, adequately protect the environment, or reduce conflict and poverty, and in many cases has aggravated all of these problems. A radically different set of policies is thus needed, which puts justice-related and environmental issues at the heart of a new global politics. At the same time, however, some transnational NGOs have sought to engage more directly with governments and corporations in order to exercise more influence over their policies. The hallmark of this more cooperative approach is working within the system, attempting to persuade key actors within government and the private sector to change the rules for the better.

First, some transnational NGOs have sought and, in some cases, been granted rights at intergovernmental organisations. Some United Nations bodies, for example,

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13 The British East India Company and the medieval Church are obvious examples.
17 A good example of this is Oxfam International’s 2001–4 strategic plan, Towards Global Equity, which puts great emphasis on the necessity of global civil society cooperation to change the rules of the global political economy. Available from (http://www.oxfam.org/end/pdfs/strat_plan.pdf).
allow accredited NGOs to observe and/or contribute to debates.\textsuperscript{18} Second, many transnational NGOs are willing to engage with the private sector, rather than demonising it, in an attempt to improve global labour rights and promote corporate social responsibility. Such engagement includes dialogue and discussion, formal advice, agreement of voluntary codes and standards, and independent monitoring schemes.\textsuperscript{19} Third, some transnational NGOs work closely with individual governments, accepting funding and acting as advisors to governmental agencies. The World Bank and various national governments employ NGOs to undertake development projects, for instance. Liaising with governmental institutions gives transnational NGOs a voice within policymaking institutions, while from the governmental perspective, transnational NGOs are attractive on the grounds that they can offer specialised skills and knowledge, such as familiarity with isolated rural areas or minority groups.\textsuperscript{20} Working closely with civil society groups can also add a veneer of legitimacy to institutions with damaged public images. By promoting dialogue with NGOs, for example, the World Bank has attempted to deflect criticism of its environmental and social policies.

Transnational NGOs can be extremely innovative in their engagement with the private and governmental sectors. Some NGOs, for instance, have contributed to international policy debates by producing codes of conduct and quasi-legal solutions to problems that draw on existing intergovernmental treaties. One example is that of the Clean Clothes Campaign (CCC), a network of European NGOs, trades unions, and worldwide partner organisations which fights for fairer standards in the global clothing industry via a combination of direct action campaigns and the creation of new standards and codes.\textsuperscript{21} Part of the CCC’s work involves the design and implementation of a code of conduct that is grounded in, but goes beyond, the demands of existing International Labour Organisation conventions – thus filling a gap in current international labour regulations. Companies that voluntarily adopt the CCC’s code and allow independent monitoring are ‘rewarded’ with a more ethical public image.\textsuperscript{22} Another example is Transparency International, established in the early 1990s to address the problem of global corruption, and the fact that institutions such as the World Bank were then unwilling to address it. Transparency International came up with a number of innovative projects, such as providing an annual corruption ratings list, and a transparent contracts scheme for developing countries.\textsuperscript{23}


\textsuperscript{19} SustainAbility, \textit{The 21st Century NGO}; S. Waddell, ‘NGO Strategies to Engage Business’.


\textsuperscript{21} See (http://www.cleanclothes.org).


\textsuperscript{23} See (http://www.transparency.org).
The effectiveness of transnational NGOs’ engagement with private corporations and policymakers depends, of course, on many factors: the extent to which the NGO is able to harness the pressure of the media and public opinion to its cause, the extent to which the government or organisation involved is prepared to make concessions, the corporation’s vulnerability to attempts to undermine its image, the extent to which agreements are enforceable, and so forth. While some transnational NGOs have scored notable successes, such as the success of labour rights campaigns against Nike, for instance, or the growing popularity of the fair trade movement, a number of organisations are impervious to change. The obvious danger for NGOs is that their partners benefit from association with ‘ethical’ actors while avoiding making significant concessions. The culture of certain international organisations, such as the International Monetary Fund (IMF) and the World Trade Organisation (WTO), is overwhelmingly opposed to further scrutiny and involvement of civil society. Despite these limits, however, transnational NGOs remain influential at the global level in two key ways: first, transnational NGOs are more directly engaged than previously in influencing policies and organisations’ agendas; and second, via participation in global networks and organisations, some transnational NGOs have greater influence ‘across borders’. This, in turn, raises an important set of questions about the legitimacy of their influence.

Legitimacy in a global order

As suggested earlier, some analysts argue that a ‘crisis of legitimacy’ is emerging at the global level. In general, making a statement about whether some action or another is legitimate is to make a claim about its rightness according to a particular set of rules or standards. ‘Legitimate’ behaviour is rightful behaviour: undertaken by the appropriate authority, in line with an agreed set of rules, and with appropriate or intended effects.24 Or as Edwards puts it, ‘legitimacy is generally understood as the right to be and do something in society - a sense that an organisation is lawful, admissible and justified in its chosen course of action.’25 The concept is multi-levelled, simultaneously implying both agreement with the rules (whatever these may be) and - following Weber’s understanding of the concept - the perception that the behaviour in question is legitimate. To describe any behaviour as legitimate or not thus not only demands knowledge of what the rules are, but also an appreciation of the way in which the behaviour is perceived and judged. In other words, the concept is a slippery one; ‘legitimacy’ has as much to do with personal morals as with constitutional principles. What might appear to one individual to be legitimate behaviour could well be inexcusable in the eyes of another.26

While political theorists and sociologists tend to disagree about what legitimacy means in the domestic context, the concept poses even more problems for theorists of

26 For this reason, some writers have advocated banishing the concept from the academic lexicon altogether. See, for instance, R. O’Kane, ‘Against Legitimacy’, Political Studies, 16 (1993), pp. 471–87.
international relations. What ‘legitimate’ behaviour means in the context of international society is particularly difficult due to the lack of any yardstick – such as a global constitution or overarching authority (a global sovereign or world government, for example) – to assess the discussion.\(^27\) This has convinced some analysts that any discussion of legitimacy at the international level is meaningless: what is deemed legitimate behaviour is, in the end, always a reflection of raw power.\(^28\) Indeed, to paraphrase Alexander Wendt, there is a danger that legitimacy is what powerful actors make of it: the powerful will always (attempt to) legitimise their actions with reference to a whole range of rules and principles (such as moral or ‘civilising’ values, national interests, the interpretation of international law, and so forth) and the underdog will always claim that such behaviour is ‘illegitimate’ according to set of competing standards. As with terms such as ‘terrorism’, ‘civilisation’ or ‘freedom’, we will always encounter the risk that arguments about ‘legitimacy’ or ‘illegitimacy’ will tell us much more about attempts to gain the moral high ground in political debates, than give us any sense of the ‘truth’.

Having acknowledged this difficulty, however, to equate legitimacy with the exercise of power would be a gross over-simplification in many cases. In today’s global context, even the most powerful actors, whether these are governments, international organisations, private corporations or NGOs, justify their actions according to some agreed standards or set of agreed rules. During debates about the justifiability of the 2003 US-led invasion of Iraq, for instance – a conflict deemed by many to be illegitimate – supporters of the invasion carefully phrased their arguments in legal terms (the violation of Security Council Resolutions) and with reference to moral imperatives (the ‘liberation’ of Iraqis). The idea of legitimacy thus has some meaning or currency that reaches beyond naked, Machiavellian power, even though it might not always have what has been called ‘compliance pull’.\(^29\) In this sense, Hedley Bull’s concept of an international society in which even the Great Powers operate within an agreed set of norms, principles and rules, is particularly useful.\(^30\) Bull’s argument that Great Powers are both responsible for making international rules and are simultaneously bound by them tends towards circularity, but it provides an important clue as to the ways in which norms and power can interact. Even in a system where there is no one rightful authority, there can exist a number of rules and conventions – whether formally sanctioned in international treaties, or existing at the level of custom – that inform our judgements of whether something is ‘legitimate’ or not.

With this in mind, it is not unrealistic to speak of a ‘crisis of legitimacy’ in contemporary international society that goes beyond the concerns and interests of a particular national group or class. Civil society groups, anti-globalisation protestors, the media, politicians, and academics across different continents have expressed deep

\(^27\) International law is the obvious contender for the position of yardstick, but laws are made and enforced by states. The problem of the lack of an enforcing sovereign thus remains.

\(^28\) For example, see the following opinion from Occidental of Umm al Qaywayn v. A Certain Cargo etc. (1978): ‘in their external relations, sovereigns are bound by no law; they are like our ancestors before the recognition of imposition of the social contract. A prerequisite law is a superior authority whether delegated from below or imposed from above - where there is no recognised authority, there is no law.’ Quoted in T. Franck, *The Power of Legitimacy Among Nations* (Oxford: Oxford University Press, 1990).

\(^29\) See further, Franck, *The Power of Legitimacy*.

\(^30\) Bull, *The Anarchical Society*. 
concerns about the legitimacy of power within the current world order. Although expressed in many different ways, the concerns add up to a general sense that the current distribution of power under conditions of ‘globalisation’ is somehow illegitimate, and that key actors in international society – such as intergovernmental institutions – lack sufficient legitimacy. Changes in the pattern of power under conditions of globalisation, it is claimed, have created levels of unaccountability and lack of direct citizen control over policies that are deemed unacceptable. Lying at the heart of this concern is the argument, most eloquently set out by David Held, that these shifts in power have opened up gaps (or disjunctures, as Held calls them), between reality and our ideals of democratic, accountable power in a modern, liberal society.

As Ian Clark points out, two issues are of particular concern: the question of which actors should exercise power at the international level, and the question of which rules should guide their action. On the first point, regarding legitimate membership of international society, processes of globalisation have given economic and political power to actors that are insufficiently accountable to citizens (compared with the formal accountability that democratic states ideally owe to voters). Intergovernmental and private organisations wield influence over states’ policies, despite the fact that many lack direct accountability to citizens. The IMF and the World Bank, for instance, which have considerable influence over governments’ financial and development policy via tools such as policy conditionality, are at least one step removed from national governance and – particularly from a developing country perspective – lack proper representation or accountability. Likewise, powerful private-sector actors such as international pension funds and multinational corporations exercise significant influence over investment decisions, working people’s lives and national governments’ taxation policies, while lacking formal accountability to the citizens whom their decisions ultimately affect. Other frequent targets of criticism include global media and – as we will see further below – transnational NGOs.

A further complicating factor in the legitimacy dilemma is not only the question of which actors can legitimately exercise power at the global level, but how – according to which rules and principles? If transnational NGOs are to engage in policy processes and – eventually – decision-making at the global level, for instance, then should they be subject to particular rules or standards, such as norms of transparency, accountability, and representation? Held’s well-known solution to the failure of national democratic structures in the face of globalisation, for instance, is a form of cosmopolitan democracy that entails the democratisation of global


32 Held, Democracy and the Global Order.

33 Clark, ‘Legitimacy in a Global Order’.

structures from the United Nations downwards. As suggested above, however, there is (as yet) no obvious normative yardstick by which to determine or measure the legitimacy of the rules: concepts such as cosmopolitan democracy and accountability compete with a myriad rules and principles upon which actors draw to justify their actions: from religious values, to existing international treaties, to national interests and ‘reason of state’. Within the corpus of international law alone, one can identify competing norms: the ‘law of states’ protecting national interests on the one hand, versus the ‘law of humanity’ – promoting and protecting the interests of individuals – on the other. The ‘crisis of legitimacy’ is thus part of a larger complex debate about the guiding principles of international society. In the view of many ‘anti-globalisation’ protestors and civil society representatives, for instance, current global structures give too much weight to market interests, and too little to the interests of humanity and principles of social and economic justice.

Illegitimacy claims: procedures, values, and effectiveness

Traditionally, transnational NGOs have made reference to a number of sources of legitimacy, including:

- Many transnational NGOs' justifications of their international activities are rooted in notions of universal human dignity or global justice. NGOs that lobby for respect for human rights by governments worldwide, or specialise in getting food and shelter to war refugees, explain and justify these activities in terms of our shared moral commitment to treating every human being equally, or our responsibility to raise awareness of and reduce suffering around the world. From this perspective, national borders and the notion of ‘across the border’ activity have little moral or practical relevance.

- Transnational NGOs frequently legitimise their activities in terms of international legal norms, such as the international covenants on human rights or the Convention on the Rights of the Child. These international treaties are frequently cited as the sources of the moral claims mentioned above.

- A third component of NGOs' legitimacy is financial/political independence. Some transnational NGOs fiercely emphasise their impartiality: Médecins Sans Frontières, for example, has a strictly humanitarian ethics; while Human Rights Watch, which investigates governments' human rights records, receives no governmental funding, directly or indirectly.

35 Held, Democracy and the Global Order.
37 Not all of these justifications are adopted by all organisations, and there are potential conflicts between them. For instance, some NGOs argue that receiving government funding or working in close partnership with governmental institutions compromises NGOs' legitimacy, others argue that it enhances it.
39 See, for instance, (http://www.amnesty.org); (http://www.oxfam.org); and (http://www.defence-for-children.org).
The existence of an extensive membership base can be used to legitimise transnational NGOs’ campaigns. Amnesty International, for example, has always used public mobilisation – via mass letter-writing campaigns on behalf of prisoners of conscience, for example – as a tool for putting pressure on governments.

The notion of legitimisation via ‘giving voice’ to or empowering abused or marginalised groups, such as children or refugees, has taken on added significance as transnational NGOs have stepped up their lobbying activities and involvement with norm-setting international organisations.

Transnational NGOs often use their expertise as a form of legitimisation: a number of organisations have built up expertise – in the form of knowledge, documentation, and experience – in niche areas, which can then be used as a resource by governments, the media, and other civil society actors.

Lastly, transnational NGOs frequently use partnership with or support from powerful actors – whether these are governments, international organisations, funding bodies, or corporations – to legitimise their actions.

In reply to these various legitimacy claims, a number of counter-arguments have been put forward, questioning the legitimacy of NGOs’ influence at the transnational level. At root, these counter-arguments focus upon the extent to which how, despite assuming a degree of public power, NGOs lack many of the characteristics used by liberal theorists to justify its exercise, such as democratic representation or accountability to the public. A ‘legitimate’ government in the modern liberal sense is chosen by its citizens, operates within the limits of a written constitution or detailed customary and legal rules, and is expected to fulfil (within reason) its electoral promises. The government that fails to accomplish any, or all, of these tasks is at risk of losing all, or some, of its legitimacy.40 Transnational NGOs, by contrast, are not subject to such constraints. For a start, they lack the well-defined citizen constituency of the modern liberal democracy. A transnational NGO’s ‘stakeholders’ are not citizens, but instead a complex group that includes large financial sponsors, members or supporters, and clients (the recipients of its aid, whether these are a particular group or class, or meant to constitute humanity as a whole). Second, as suggested above, many transnational NGOs justify their actions not in terms of democratic processes, public accountability, or levels of representativeness, but with reference to specific values and interests – the interests of a specific group, say (refugees, endangered species, children in poverty, abused women). They are not required to represent a balance of views. Thus in assuming functions previously held by states – such as putting forth views in international organisations, for example – NGOs challenge many of our assumptions about what constitutes legitimate governance.41

This state/non-state, public/private private power comparison generally follows one of three particular paths. First, one encounters the claim that transnational NGOs lack legitimacy because expanded global influence has not been matched with expanded accountability or representativeness. At the heart of this claim is the notion that while an NGO will often claim to represent the public – by acting as a mouthpiece for the poor, or giving abused women a voice in powerful institutions, or

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40 Beetham, The Legitimation of Power.

speaking up for environmental issues on behalf of citizens all over the world – in practice, transnational NGOs can be unrepresentative and undemocratic institutions. The Economist once put it thus: ‘[NGOs] may claim to be acting in the interests of the people – but then so do the objects of their criticism, governments and the despised international institutions. In the West, governments and their agencies are, in the end, accountable to voters. Who holds the activists accountable?’ The implication is that whatever the imperfections of liberal democracy, governments still have greater procedural legitimacy than do most NGOs.

A particular problem, in this respect, is the potential conflict of interest between a transnational NGO’s ‘stakeholders’. Transnational NGOs have been criticised, for example, for putting too great an emphasis on Northern interests and values in their campaigns in order to attract donations and publicity. This undermines transnational NGOs’ accountability and representativeness, since the very people whose lives the NGOs seek to affect are also those who have the least influence over campaigns. Another procedural problem relates to how representation translates into influence in international organisations in which NGOs have (limited) status. If there is no clear relationship between an NGO’s views and those of its supporters, then might it be determined which transnational NGOs should have rights in global institutions and which should not? The perceived danger is that those NGOs with the greatest resources and most effective tactics – as opposed to the most popular support – might exercise undue influence on organisations’ agendas and policies. A further concern is that the lack of formal accountability either to the general public, stakeholders, or the market, allows certain NGOs to deliberately engage in non-transparent financial practices, such as with the funding of banned terrorist organisations.

A second set of arguments focuses on the tricky relationship between transnational NGOs’ values and the extent to which it is possible to identify commonly held values and interests at the global level. This critique operates at a number of levels. One argument is that due to insufficient representation and democracy within NGOs, the latter often fail to accurately reflect their clients’ values and are disconnected from the communities that they attempt to help. There are indeed many potential conflicts of interest and values between transnational NGOs seeking to achieve change and the people affected by their policies. One such area is that of environmental policy, where tensions have emerged between Northern groups seeking to protect and conserve the environment by opposing large-scale dam construction and forest clearance, and the economic ambitions of the people living there. While the issues can be complex and multi-layered, finding solutions to such problems involves

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44 This is, of course, related to the issue of procedures, since the tighter the formal representative relationship between an organisation and its constituency, the more one would expect the organisation to reflect its constituents’ values.

45 Edwards, NGO Rights and Responsibilities, p. 23.

taking many values and interests into account – something that not all INGOs were designed to do.\textsuperscript{47}

As well as the practical issue of how to translate values into action, there is also more profound scepticism about the possibility of identifying a defined set of values and interests at the global level. Even those who have written optimistically about the possibilities for democratisation of international society, including Held and Jürgen Habermas, have expressed doubts about transnational INGOs' abilities to transcend concerns about the local and represent the global.\textsuperscript{48} From this perspective, global values cannot go beyond the basic frameworks set out in international treaties: INGOs will always represent particular groups and constituencies, however passionately their claims to global representation are expressed. In Held's blueprint for cosmopolitan democracy, for example, INGOs play an important institutional role in linking different levels of governance but they cannot replace states as representatives of communities of values and interests. The implication of Held's argument is that only political structures – in the sense of formal, constitutional, democratic structures – can be truly representative, thus undermining the notion that INGOs can act as representatives of universal human values at the global level.\textsuperscript{49}

A third set of arguments questioning INGOs' legitimacy focuses not on how or why INGOs justify their activities, but on the outcomes of their activities and the effectiveness of their actions. This perspective maintains that even if transnational INGOs' moral or procedural justifications for their activities are convincing, their expanded role in world politics is delegitimised by their inadequacies and ineffectiveness as organisations (an argument that, of course, is more applicable to some organisations than to others). A range of evidence can be drawn upon to support the argument that as media-savvy organisations hungry for publicity, INGOs are often ill suited to dealing with long-term issues.\textsuperscript{50} High-profile stunts designed to capture the public's attention, while effective in producing headlines, might exaggerate or distort the complex nature of the issues at hand. Another effectiveness-related criticism is that transnational INGOs have insufficient means of learning from their experiences, and that they frequently fail to provide real evidence of their successes or apply lessons learned from one project to another. These arguments are linked to the procedural and values-based arguments outlined above: the implication is that as organisations, INGOs are particularly prone because they are not subject to detailed scrutiny that results from public office or from market competition.


\textsuperscript{49} See also Bull, The Anarchical Society, p. 82.

A crisis of legitimacy?

Partly as a result of these criticisms, civil society representatives have taken the issue of transnational NGOs' legitimacy seriously and introduced programmes to improve increased transparency, accountability, and representation in decision-making.51 While these are undoubtedly of some value, it is necessary to step back from the debate and assess the extent to which the ‘legitimacy problem’ is quite as straightforward, or as extensive, as some critics suggest. For one thing, many of the empirical claims made about transnational NGOs’ activities are of questionable accuracy. With respect to learning and effectiveness issues, for instance, there is ample evidence to suggest that transnational NGOs are subject to strict external evaluation criteria and submit themselves to regular internal review processes and audits. Transnational NGOs are, after all, dependent upon donors for financial support and are thus under constant pressure to prove their credibility and be accountable for their actions.52

From a theoretical perspective, there are two pressing problems with the ‘illegitimacy’ arguments. First, they tend to rely heavily upon one procedural yardstick to judge the legitimacy of transnational NGOs: namely, the comparison between the legitimacy of liberal democratic states as constitutionally limited institutions demarking distinct communities with defined values, and the supposed illegitimacy of transnational NGOs (in the sense that they lack many, or all, of these defining characteristics). As explained above, this state/non-state comparison is used to undermine core transnational NGOs’ legitimising strategies, such as justification of their actions in terms of universal human rights or respect for the global commons. Such legitimising strategies, as we saw, can and have been attacked on the grounds that they can neglect to allow for important differences across cultures (a problem to which the nation state, or smaller, local political units, is often proposed as a solution).

This raises the question, why use this particular procedural yardstick – liberal limits on public power – to judge the legitimacy of transnational NGOs? The obvious reply is that liberal democratic values have become so ubiquitous in our understanding of the proper use of public power that we assume that they should apply to all institutions, state or non-state; as Ronald Dworkin recently put it in a piece on rights to free speech, ‘laws and policies are not legitimate unless they have been adopted through a democratic process’.53 There is no good reason to assume, however, that the forms that these values take should mimic the forms assumed by state institutions, such as representation via elections, or transparency via public decision-making and the public disclosure of detailed financial information. The argument that NGOs are not democratic because they are not formally representative, or do not allow direct participation by stakeholders in decision-making, displays, at best, a failure of political imagination, and at worst, a desire to misrepresent how transnational NGOs actually function.54

52 Many large INGOs submit their finances to external audit and give a detailed breakdown of expenditure – including the balance between administrative and programme costs – in their annual reports. In this sense, INGOs can be more transparent than private sector corporations.
54 This is certainly the case with attacks on INGOs from radical right- and left- wing organisations.
There are a number of novel ways in which NGOs that are not formally representative of people's views do, in practice, satisfy procedural criteria of legitimacy, such as representativeness. Take, for instance, the case of a network-based transnational NGO that, despite having no formal membership base, lobbies governments vigorously on a number of environmental or social issues. While at first glance, this NGO might seem to lack legitimacy due to this lack of formal representation, looking closer, one can discern representativeness gained by proxy, via close relations with other NGOs that do have extensive memberships. Large organisations that can demonstrate extensive popular support, such as Amnesty International and Oxfam International, frequently work with smaller networked NGOs on the grounds that the latter agree with their core mission statements - values and aims that have already been 'legitimised' by high levels of public support. Moreover, transnational NGOs can achieve forms of democratic legitimacy by working closely with governments that have been elected as representatives of the people. In addition, critics of NGOs imposing their 'own' standards often neglect the fact that these standards are grounded in international treaties agreed by democratic governments. The number of people supporting or giving money to a transnational NGO is thus a misleading indication of its potential legitimacy. Rather than criticising NGOs for lacking specific mechanisms, a more worthwhile goal would be to investigate how new and original forms of legitimacy have already developed in the NGO sector, and how they might be strengthened further.

More seriously, however, the second problem is that the comparison between 'state legitimacy' and 'non-state illegitimacy' is deeply flawed on the grounds that it fails to recognise the extent to which states themselves consistently fail to meet liberal democratic standards of representation, accountability and transparency. In this sense, accusations of illegitimacy provide a platform for criticising transnational NGOs' activities - an activity which the corporate sector is often keen to engage in - while failing to acknowledge the extent to which governments and corporations have flawed records or themselves lack 'legitimacy' in the eyes of the public. The liberal distinction between public and private interests is meant to protect citizens from abuses of power and to ensure that decisions are made in the public interest. In practice, however, there is a gulf between liberal ideals of constitutionally sanctioned public power and the realities of modern governance under conditions of globalisation. In the West, for instance, the authority and public integrity of the liberal democratic state has been challenged by the increasing encroachment of private power and interests. Over the last twenty-five years, notions of public interest have been eroded by the privatisation of public assets, the positioning of the market at the ideological heart of modern governance, and the tight alignment of government and corporate interests. In the United States, this can be observed in the close relationship between oil companies and the current presidential administration, and the catastrophic effect that this relationship has had upon American environmental policy, which has been redefined in market terms, sweeping away many checks on the exploitation of natural resources; and the extent to which extensive lobbying on behalf of private interests has become part of the everyday culture of politics in

Washington and beyond. As an institution, the contemporary state offers a far-from-perfect example of the limitation and regulation of powerful interests.

NGOs, of course, can be seen as part of this privatisation of public power. The crucial difference between NGOs and private-sector actors such as lobbying firms, however, is that NGOs - on the most part - are driven by non-profit considerations.\(^{56}\) As such, they can act as a check and counterbalance to the dominance of market interests, by criticising governments that abuse their citizens' rights, whistleblowing on corrupt firms and public servants, exposing social and economic injustices, and so forth. A key legitimising aspect of all of these activities, of course, is the fact that in many cases, the government concerned has already signed up to the standards that are being violated, but is failing to implement them. The environmental movement is one example of an area in which transnational NGOs have played an essential role in highlighting issues such as the extent of environmental degradation and the loss of biodiversity, and the failure of states worldwide to address them and to implement their treaty commitments. Groups such as Greenpeace, Friends of the Earth and WWF have helped to force environmental issues - however grudgingly, at first - onto governments' agendas. While these groups might be criticised for lacking transparency, or for failing to justify their decision to support certain conceptions of rights or values, or for committing the occasional factual inaccuracy, what is significant about their activities is, in fact, the glaring failure of conventional politics and politicians to address these problems or ensure the implementation of agreed solutions. In other words, transnational NGOs have legitimacy that is derived from the (failing) legitimacy of states.

The comparison underpinning many of the criticisms of transnational NGOs' legitimacy, contrasting the legitimacy of 'state' and 'non-state' actors, is thus ultimately unconvincing. NGOs are frequently compared with idealised institutions that bear little relationship to the reality of modern governance, nor the extent to which distinctions between public and private power have become blurred under conditions of globalisation. It is doubly ironic that in critiques of NGOs, the state is held up as a model of legitimate power precisely at a time when the integrity of the state as a 'public' body bound to act in the common interest has been eroded. The critical issue is not whether NGOs should become more accountable or transparent - in an ideal world, every institution should - but whether it is useful to perceive transnational NGO activities as lacking in 'legitimacy' when they are compared with what are, in fact, less-than-ideal institutions. By focusing on how transnational NGOs can adopt forms of legitimisation comparable to those possessed by states, one risks missing the important point that transnational NGOs continue to draw legitimacy from the fact that some, at least, offer a critical perspective on a flawed system. This is not to argue that the procedural reforms that are being introduced are misdirected, but that the debate risks being distorted by the state/non-state comparison. Thus ultimately, the role of transnational NGOs in perpetuating the 'crisis of legitimacy' at the global level does not hinge on distinctions between 'state' and 'non-state' actors but, as suggested in section two, on a more

\(^{56}\) This is not to deny, of course, that some NGOs are created with other interests in mind, such as those supported by corporations to put forward a particular set of views on, say, environmental policy, or to take a particular political line. NGO Watch, for instance, an NGO set up by the American Enterprise Institute, falls into this category, as would the International Policy Network, which receives financial support from ExxonMobil.
general problem: that of how to limit and regulate power under conditions of globalisation.

**Conclusion**

The increasing importance of transnational NGO activity has become an integral element of debates about the meaning of legitimate action in contemporary international society. Transnational NGOs have been criticised for lacking legitimacy on three specific grounds: a lack of procedural checks and balances; the fact that they tend to justify their actions in terms of values; and for lacking effectiveness. These claims are limited, however, first, by the fact that they do not take account of novel or atypical ways in which transnational NGOs can achieve legitimacy comparable to that of states; and second, by the fact that the arguments tend to be rooted in a tenuous comparison between state legitimacy and NGOs' illegitimacy which fails to acknowledge how state power deviates from liberal norms in practice. As a result, the extent of the transnational NGO legitimacy dilemma has been misrepresented. NGOs' monitoring and whistle-blowing roles as checks on state power remain just as critical as adopting procedural codes of 'legitimate' conduct, grounded in concepts of accountability, representativeness and transparency (although this does not have to be a case of either/or).

As suggested in the second section of this article, the problem of locating and defining transnational NGOs' legitimacy is complex due to the fact that legitimacy is both a sociological and a normative concept. On the one hand, legitimacy is dependent upon people's perceptions, and this injects an element of relativity into the debate. Transnational NGOs are legitimate in some aspects, it is argued, due to the fact that they are seen as more legitimate than states in certain areas. On the other hand, the concept of legitimacy demands some normative yardstick - whether in the form of agreed procedures and rules, values, or sources of legitimacy, by which to measure whether an action or actor is 'legitimate' or not. As pointed out above, the fact that no such yardstick exists at the international level, and that different normative standards compete, complicates the issue even further.

These complexities demand that instead of adopting a fixed definition of legitimacy, such as the legitimacy of the liberal democratic state, the future challenge for understanding and defining the legitimacy of transnational NGOs in international society will be mediating between these sociological and normative aspects. For instance, is it possible to come up with a normative basis for the legitimate exercise of power in international society - based on, for example, the principle of consent, or the principle of autonomy - that allows for competing perceptions and visions of what 'legitimate' rules and membership of international society actually mean? Such an approach requires a deeper level of reflection than has been typical of debates on transnational NGOs' legitimacy to date.