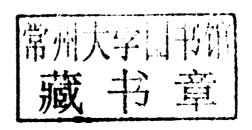


Steven Wheatley

STUDIES IN INTERNATIONAL LAW

The Democratic Legitimacy of International Law

Steven Wheatley





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THE DEMOCRATIC LEGITIMACY OF INTERNATIONAL LAW

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

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For Mum

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Whalley (Lancashire), August 2009.

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