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Non-State Actors’ Interference in the International Debate on Moral Issues – Legitimacy and Accountability

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1. Introduction

It is one of the striking characteristics of our age that, after a long relatively stable period in which politically and legally sovereign states were the loci of control, the role and influence of national governmental authorities is declining. International and supranational authorities fill up merely part of the space that is thus created. Within Europe, for instance, many powers and responsibilities, formerly uniquely attributed to national governments, have now been transferred to the European Union. On an international level, international and supranational authorities play a significant role as well. Nevertheless, the exponential growth of the global trade and of the transboundary traffic and technologies have created open spaces: spaces where neither national governments nor supranational or international governmental authorities play a role. Mostly, this is so because modern trade, traffic and technologies have become blind to national boundaries and are inherently insusceptible for government influence, while international or supranational governmental organizations that could occupy themselves with these phenomena are still lacking. Sometimes, however, the possibilities are restricted by international treaties while these treaties themselves do not provide adequate covering of the field of problems where they discourage interference by national governments. This is the case with the WTO treaties that discourage the interference by national governments in relation to moral questions regarding animals and nature.¹ Non-state actors, such as nongovernmental organizations (NGOs) and internationally operating and multinational enterprises (MNEs) – on their own or together in alliances – are increasingly inclined to fill up such empty spaces. Their activities can be located somewhere on a scale between two poles: one of informing the general public, the other of actual interference in procedures of policy making either by international or supranational and national governmental authorities or by themselves. For NGOs – on which the main focus will be in this chapter – the scale ranges from speaking up in public debates, through lobbying, organizing campaigns to raise public awareness, raising funds, organizing protests and boycotts, planning and implementing concrete action programs, e.g. for protection of the environment, help with food and medicine, education, to developing public policies independently or in cooperation with enterprises or governmental authorities, etcetera.

Although at first sight this position of NGOs and MNEs seems to be a matter of bare necessity, it is sometimes thought that it is to be preferred above a further expansion of international or supranational authorities.² In this contribution, I will not develop a positive argument of such a kind for the efforts of NGOs and MNEs in these fields. Instead, I will put into perspective the legitimacy of the activities of non-state actors, and of NGOs in particular. All of this, of course, with the hope of ultimately finding a way of corroborating the legitimacy of responsibly acting NGOs. Without this first preliminary movement, one need not even start thinking about a positive argument for the role of non-state actors.

¹ See De Brouwer’s contribution to this volume.
² See Dubbink’s contribution to this volume.
2. Why is the legitimacy of non-state actors problematic at all?

One might wonder why I find the legitimacy of non-state actors at all a topic worthy of debate. Are non-state actors not to be considered as merely private actors whose role, like any private person’s, does not stand in need of legitimization? First of all, it might be good to keep in mind that although with regard to private persons we normally do not tend to speak of legitimacy or legitimate actions, this does not mean that certain requirements associated with legitimacy do not even in a very broad sense also apply to private persons. Indeed, in democratic societies private persons are granted all kinds of freedom to speak up, interfere in debates, undertake action et cetera. At the same time, however, these freedoms are not absolute, unconditioned or unrestricted. Private persons can be held accountable for what they say and do. The bigger the impact of what they say and do and the more risk their words and deeds imply for others, the more likely they are indeed to be held accountable and the more stringent will be the requirements regarding their responsibility. This accountability constitutes a kind of bottom line legitimacy that applies to the organizations of private persons, such as NGOs and MNEs as well. There is, however, an extra reason to discuss the legitimacy of non-state actors. As I stated in the introduction to this contribution, non-state actors – on their own or together in alliances – are increasingly inclined to fill up the space left open by national, international, and supranational governmental authorities. In this way, they gradually come to fulfill public roles that in a traditional state are mostly performed by governmental authorities. From the fact that they take up similar roles, I do not simply want to infer that they must conform to similar requirements regarding their legitimacy. Non-state actors just and simply are not governmental authorities. Nevertheless, to the degree that they fill up the void, left open by governments, their power and the effective use of their power increase. And it is exactly the growth in power and the possibly far-reaching consequences thereof that calls for consideration in terms of legitimacy. Simply put: power implies responsibility and readiness to legitimate one's role. As the activities of non-state actors can have ever further reaching consequences their ability to legitimate their activities becomes ever more important. 3

Now, let me narrow the focus and turn to the legitimacy of NGOs in particular. One may wonder why I dare to ask: Are NGOs the appropriate organizations for influencing and forming policies regarding moral and social issues? In the debate on globalization, the role of NGOs is often taken for granted. First, there is the empty space for which no governmental authority – national nor international or supranational – is qualified but which nevertheless has to be filled up. Second, there is a certain tendency to consider NGOs as the only type of players in the field that can act as counterbalancing power against the supposedly overwhelming power of MNEs that also try to influence policies and policy formation. Nonetheless, from a morally normative perspective, the self-imposed role of NGOs is all but natural. (The reasons for doubt also apply to MNEs. However, as I already indicated, MNEs will not be the subject of further investigation here.)

The first reason for doubt is that the fields in which NGOs interfere are almost without exception always situations in which normative conflicts occur. These are situations in which different values or different moral principles when applied to these situations lead to conflicting suggestions for actions or policies. For example, enhancing the welfare of people by stimulating certain ways of producing food in developing countries may be detrimental to the natural environment and therefore conflict with values that call for respect for the natural environment. NGOs are not well equipped to deal with this kind of conflicts. NGOs are mostly single-issue organizations. They focus on – for instance – medical care, the protection of the environment or the protection of human rights. Seldom are they oriented to a broader, inclusive range of objectives. When such a monistic organization is involved in a normative conflict, it is not to be expected that it can satisfactorily deliberate and reach conclusions. (Business corporations are in a sense also single-issue organizations, their most important purpose being to make or maximize profit.)

3 For an extensive elaboration of this rather consequentialist argument regarding an analogous problem, see my Vedder (2001).
The second reason is that NGOs lack democratic legitimacy. Many Western-European and North-American NGOs enjoy the support of numerous members and sponsors. But these forms of support are radically different from the procedures for representation in democratic states. For one thing, it is not clear whether the members or sponsors themselves conceive of their support in terms of representation. Furthermore, it is often not so clear for which reason people have become members or sponsors, exactly. Is it the organization’s mission or is it all those nice goodies (journal subscription, reduced prizes for gadgets, admissions et cetera). Finally, the impact of the interference by an internationally operating NGO often is not felt by the members or sponsors of the NGO itself. Its main activities affect people who are not members or sponsors. (And of course, this drawback also applies to MNEs.)

It is sometimes suggested that the urgency of the abuses and wrongs that NGOs try to prevent or compensate suffices as a justification for interference. And perhaps one should agree on this in situations of immediate dangers and risks where the NGO does not go much further than alarming the general public and providing urgent assistance. However, the qualification does not apply to the numerous long lasting and systematic interferences of NGOs. The legitimacy of NGOs is not naturally given. But then again: What is it anyway – legitimacy?

3. Legitimacy

In political theory, the notion of legitimacy is usually connected to the power and the exercise of power by state authorities. Michael Edwards (1999) observes that the issue of legitimacy is seldom brought up in the literature on NGOs. This may have much to do with what has already been mentioned: that the role of NGOs is often perceived as natural and, of course, with the obvious partiality of NGOs regarding victims and parties worst-off. Even in the literature, in which these questions are brought to the fore explicitly, however, a clear concept of legitimacy and legitimization is mostly lacking. Edwards seems to use the notions in an almost unreflected manner. Nonetheless, he formulates a broad definition:

> Legitimacy is generally understood as having the right to be and to do something in society – a sense that an organization is lawful, proper, admissible and justified in doing what it does and saying what it says, and that it continues to enjoy the support of an identifiable constituency. (Edwards, 1999, 258)

Edwards’ definition is vague. Two things come to mind, however, immediately. First, on the basis of his terminology, one may get the impression that he – to my mind correctly – assumes the notion to have a moral, a legal, and a social or political dimension. Not coincidentally, these are exactly the respects in which the concept plays a part in the (very few) debates on the legitimacy of NGOs – unfortunately mostly in a confused way and not explicitly distinguished within one and the same argument. Edwards, himself, for instance, having once stipulated the notion, frequently seems to forget to take into account the three semantic dimensions when he later on uses the term. Instead of carefully distinguishing the three aspects of the meaning of the term, he quickly narrows the concept of legitimacy to questions of moral justification. Second, Edwards does not distinguish between the legitimacy of the organization and the activities of an NGO on the whole or in general, on the one hand, and the legitimacy of a particular activity of an NGO, on the other. We may label these two kinds of legitimacy as global legitimacy and occasional legitimacy, respectively. The distinction between the two is of some interest, because failing to do so makes it difficult to understand how certain organizations can in itself and on the whole act legitimately, whereas particular activities of theirs can be illegitimate. I will return to this second point after having first elucidated the first with

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4 Edwards mentions the tendency of spokesmen and spokeswomen of NGOs to let non-moral aspects of legitimacy dominate discussions on the issue.
help of some elements of David Beetham’s theory of the legitimacy of state governments. I do not consider Beetham’s views as the ultimate answer to all questions regarding the definition of legitimacy. Neither do I take his views to be representative for the whole of political theory. The interesting thing about Beetham’s theory is that his three-dimensional conception of legitimacy connects very smoothly to the three aspects that can be distinguished regarding the use of legitimacy with regard to NGOs. Some reflection on Beetham’s conception also may help us to come to terms with the difference between legitimacy when applied to NGOs and legitimacy when applied to state governments.

David Beetham’s definition is an intelligent, highly sophisticated concept that can serve as a kind of stepping stone for further clarification. Beetham’s concept of legitimacy is completely tailored to national governmental authorities. Beetham considers the notion of legitimacy to be essentially multidimensional (Beetham 1991b, 12-34, 64-97). Legitimacy has three important aspects. These could be referred to as respectively the legal, the morally normative, and the sociological aspect. According to Beetham, legitimacy is a matter of conformity to rules (legal aspect), which can be justified in terms of shared beliefs (morally normative aspect), while the organization rests on expressed consent (sociological aspect). Beetham emphasizes the importance of the normative dimension of his concept. Whereas in Weber’s classic definition, legitimacy hinges on conformity with rules that are in turn just considered to be legitimate (in German: “als legitim angesehen”), in Beetham’s approach, legitimacy is primarily a matter of conformity to rules that are logically and conceptually connected with shared moral beliefs, convictions and intuitions. According to Beetham, there must be a truly logical or conceptual relationship, not merely an allegation pointing to such a relationship. The relationship must be detectable by logical and conceptual analysis and not only by sociological research. Regarding the third requirement, Beetham is also very clear. The exercise of power by the organization must be based on consent. This consent must explicitly or implicitly be expressed by elections, declarations of support, or by societal rituals and mechanisms by which people show their consent implicitly. Beetham considers this dimension to be very important in real practice. According to him, it safeguards the social support for the organization and its activities. The expressed consent guarantees the motivation and commitment that are at the basis of the obligation to cooperate with the organization. The degree of commitment required rises with the degree of intricacy of the activity for which compliance and cooperation are required (id., 30). It is primarily because of this aspect of consent that legitimacy can be said to enhance the order, stability and effectiveness of a system of power (id., 34).

When traditional political theory reflects on the reasons for the legitimacy of governmental authorities it has a tendency to connect these reasons to cooperation and compliance. Political theory is first and foremost interested in moral and prudential reasons to accept government authority. According to Beetham, these reasons have to do with three factors. They, first, regard the differentiation of power and ways of exercising power on the basis of certain qualities, competencies, capacities or merits. Second, the reasons explain why the transfer of power not merely serves the interests of the party exercising the power, but also the interests of the subordinate parties. Third, they refer to the consent of those who are presumed to give their consent (id., 59-60).

4. Legitimacy of NGOs

Direct application of Beetham’s concept of legitimacy to NGOs seems to be a little reckless. First and foremost, Beetham’s concept is exclusively and explicitly tailored to national governments. The purpose of the legitimization of a national government is primarily to contribute to – in classic terminology – the subjection and the obedience of the people. Such a relationship of subjection is out of the question in the case of a NGO. Where a national government is concerned the subjection has a

5 See also Weber (1972) 122, 549 and Beetham (1991a).
very wide scope, encompassing almost all aspects of life, except certain parts of the personal sphere. A NGO, by contrast, will seek merely permission for certain activities, lobbying, being a discussion partner in trade-offs, and perhaps it will seek a restricted willingness to cooperate and support. Second, Beetham’s concept has an important socio-historical component, which can easily go unquestioned as long as the concept is reflected on in relation to national governments. The rules to which an organization must conform, the shared beliefs on which these rules should rest, and the consent that must be given to the organization, will in every state and every society with its own culture and conventions easily take their own forms. These forms will not all be completely different from those in other countries and societies, but nevertheless major differences will appear. Of course, this is no problem as long as the scope of the concept is restricted to the context of one country or society. As soon as the scope surpasses the context of one country or society problems may arise, however, because of cultural and conventional differences. And of course, when the concept of legitimacy is applied to NGOs that operate in an international arena, against the background of moral and cultural pluralism, the same kind of problems may occur.

Because of these observations it is important to find out who the parties are that are addressed by the legitimization. The concept of legitimacy, just like the notions of responsibility and accountability, seems to presuppose a certain forum or audience: a particular group that has to become convinced by the argument that is assumed to demonstrate the legitimacy of the organization involved. Of course it is not necessary that all members of the group are actually persuaded by the argument. What is needed is that they would be convinced when they would be confronted with the argument (and that they would be in the possession of normal mental capacities, etc.). Now, in the case of the legitimization of a national government the audience addressed will have to be the members of the society over whom the government will be appointed. It are these members who are affected by the activities of the government and who for prudential or moral reasons will want or will not want to endorse the appointment and the further activities of this government. For internationally operating NGOs we could argue analogously that the audience addressed should consist of all people backing it by membership or by financial support but also of the people who are affected by its activities, e.g. people in the Third World who receive its assistance or people who are otherwise confronted with its activities, or perhaps even the whole international community which is implicitly asked for permission to act or willingness to cooperate and to assist. Now, because the international community, the people affected by the activities of NGOs, and members and financial supporters of NGOs mostly will have diverse cultural and moral backgrounds, the legitimizations of NGOs will only refer to a restricted range of shared norms and values. The legal infrastructure (organizations and regulation) on an international level is also restricted. This should be kept in mind when we now turn to the positive part of applying Beetham’s definition to NGOs.

Beetham’s definition differs from the current and mostly implicit ways of thinking about the legitimacy of NGOs by its primarily procedural character. The current way of thinking about the legitimacy of NGOs – if it ever goes further than simply confirming the actual role of NGOs – mostly hinges on an appeal to substantial criteria. A justification using substantial criteria is a justification that refers to the degree to which an individual or an organization conforms to values and ideals. Here, one may think of arguments such as: this organization defends respect for human rights, animal well-being, the protection of the environment, it helps the needy and the poor. A procedural justification is a justification that refers to the formal aspects of the decision procedures of the individuals or the organizations involved. Does a decision that will initialize an activities rest on the consent of all people involved? Are the procedures for certain decisions and policies transparent and can they be checked? These are all procedural criteria. Beetham’s first condition for legitimacy is clearly procedural, just as his third one is. Only the second condition indirectly uses a substantial criterion, i.e., the requirement that the rules to which the organization involved must conform rest on shared beliefs concerning values and ideals.

It may come as no surprise that procedural criteria do not play such an important part in the traditional ways of thinking about the legitimization of NGOs. The procedural criteria to which
Beetham refers mostly have an institutional basis in the community that must accept the government involved. No wonder then, that he refers to the rules to which a government should conform more often as legal rules than as legal and moral rules. And, naturally, “expressed” consent immediately reminds one of election-procedures and (implicit) societal and political mechanisms with the help of which one can express consent. The situation of internationally operating NGOs, of course, is best characterized as one in which institutional facilitations for legitimization through procedures often are absent. Although international NGOs cannot use the same kind of elaborate legal systems, or the same kind of election procedures, as national governments on a national level can, nevertheless international law has developed, and there seem to be enough commonly recognized legal principles that can gradually come to function as institutional hinges in the international community for the application of a procedural criterion (Amnesty International and Pax Christi International 1998). Because of the lack of sufficient other common societal and cultural conventions and institutions on an international level which could provide the institutional bedding for the procedures, one could in addition introduce alternative procedural criteria that can be applied globally and against the background of a big cultural and moral pluralism. Starting points for this approach could perhaps be found in, for example, the procedures for accreditation of NGOs with international organizations such as the United Nations. Here, the existence of an internationally recognized authority is used in order to vest the NGO with certain credibility. But of course one could also think of other less far-reaching options that are minimally dependent on specific cultural or institutional contexts, such as a high degree of transparency of the organizational system and the decision procedures of the NGO, so that they can be checked against legal and moral criteria.

Sometimes the quantity of membership is referred to as a criterion for the legitimacy of an NGO. This idea seems to rest on an analogy with political elections. A high number of members, however, cannot be sufficient ground for the legitimacy of an NGO. It is often doubtful for which reasons people become members of an NGO – true interest, a feeling of shared moral conviction, or just the desire to obtain certain goodies that are attached to the membership? More importantly, unlike the people who vote for a certain political party in a certain country, the members of an NGO are mostly not the same people that are directly affected by the activities of the NGO. Nevertheless, the consent and the support of the latter seems to be at the least as important as the consent and support by the members who supply (part of) the means for the activities of the NGO.

So there are some possibilities of applying procedural criteria in the case of internationally operating NGOs. But what about the substantial criteria? The degree to which the activities of an NGO conform to certain values and ideals can play a role in its legitimization. Requiring that these values and ideals rest on a certain commitment of all who are involved and affected, however, will be problematic for many a NGO, simply because, mostly, the values and ideals to which they connect are not supported by all the groups involved. Think for instance of an NGO for the protection of the environment or for animal welfare. In these cases two ways out seem to present themselves. One restricts oneself to procedural criteria or one tries to show that the values and ideals that one endorses ultimately derive from or are logically or conceptually connected to universal values, which – in the strategically strongest case – have been laid down in international laws or legal principles, or the commitment to which – in the strategically weakest case – could be consented to by every rational person on the ground of a morally normative argument, in the sense that every rational person would recognize it as an on principle defensible or at least tolerable value, even if she herself would not commit herself to it.

It may, finally, also be helpful here to recall the distinction between the general legitimacy of NGOs with respect to their organizational system and their activities as a whole and the specific legitimacy of occasional activities of NGOs, on the one hand, and the different forms that these latter specific activities may take on the other. Both the general and the specific forms of legitimacy can be a matter of procedural and/or substantial criteria. With regard to the legitimacy of specific actions, however, one can further differentiate. It would go much too far to spell out all possibilities, but it seems all but

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unreasonable that different requirements be applied to different kinds of activities. So, for instance, the mere participation in public debates or merely speaking up for a certain cause may be connected to fewer requirements than straightforward organization of boycotts. And maybe even the stringency of the requirements to be applied may be connected to the probability, extent and intensity of possible harm inflicted on the parties involved.

5. Conclusion

Confronting, first, Edwards’ and, second, Beetham’s conception of legitimization gave rise to the distinction between the specific legitimacy of occasional activities of NGOs and the general legitimacy of NGOs with respect to their organizational system and their activities as a whole. Obviously, the two cannot be separated completely in real practice, but they are not identical. When reflecting on the legitimacy of internationally operating NGOs one must take into account that these NGOs must act against a background of moral and cultural pluralism. The legitimacy of NGOs and the legitimacy of national governments differ radically in that the relationship between NGOs and those involved in their existence and activities does not allow of the same kind of subjection, as is the case with national governments and the communities over which they are appointed. The legitimization of NGOs is merely oriented towards obtaining permission for acting, and, in some cases, towards obtaining practical support and assistance. Bearing all this in mind, we must conclude that in the legitimization of NGOs the emphasis must be on the satisfaction of procedural criteria (transparency of the organization, possibilities of checking decisional procedures, accreditation with international organizations) and the possible – i.e. primarily purely conceptual and normative – connection of the values and ideals of the NGOs involved with universal values (preferentially already incorporated in international law and legal principles). Having thus concluded, it may be advisable to keep in mind that legitimacy is not an all or nothing concept. The question of legitimacy only arises when there are doubts and hesitations with regard to organizations. Satisfying the aforementioned criteria of legitimacy is an ongoing process merely directed to prevent the question of legitimization from rising.