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About myself: teach legal philosophy at Waseda University, Tokyo; interested in the concept of law, especially in relation to international law; presented a paper at Essex, where the Spring conference of the International Law Association British Branch was held in 2015;

Why Talk about the Legitimacy of International Law?

The Russian aggression against Ukraine

- The UNGA deplored the Russian invasion of Ukraine, albeit with considerable nuance.

The alleged genocide in Gaza by Israel

- The widespread disapproval of Israeli attack on civilians, leading to South Africa's submission to the ICJ

The moral wrong of the breach of international law?

- Unless international law is morally justifiable, condemnation in law is either pointless or redundant.
- Condemnation is pointless, because it has no moral force
- Condemnation is redundant, because it adds nothing to morality

What Is the Legitimacy of International Law?

- Sociological sense/philosophical sense
 - The perception that international law is legitimate (empirical)
 - International law is legitimate *simpliciter* (nonempirical)
- Substantive justice/legitimacy
 - The justice of rules and principles of international law may be disputed
 - The legitimacy of international law gives an independent reason to abide by its edicts
- If international law is legitimate, the judgement of law is neither pointless nor redundant.

Can State Consent Ground International Law's Legitimacy?

State consent is considered the basis of the bindingness of law, with the exception of jus cogens.

The morality of state consent is questionable: forced consent is still legally valid (VCLT).

Proposed Foundations of the Legitimacy of International Law

- Democracy: The consent of democratic states; *demosi-cracy* (Besson)
 - +) Gives a moral dimension to state consent/the law-making process
 - -) The will of the state, the will of the people? Who determines democracy by what criteria (esp. where populism is widespread)?
- The duty of mitigation (Dworkin): Moral requirement to increase the state's political legitimacy
 - +) No associative obligation beyond the state
 - -) Parochialism
- The thin justice of international law (Ratner): Human rights and peace
 - +) Universally recognisable values
 - -) Moral disagreement; unspecific to law
- The "Transcivilisational" Approach (Onuma): Acceptance by different legal traditions
 - +) Avoids alienation of esp. non-Western nations
 - -) Unwarranted substantiation of civilisation; sociological
- The Global Governance Institutions (Buchanan & Keohane): Political legitimacy based on epistemic and other virtues (the complex standard of legitimacy)
 - +) A practical approach to the legitimacy of GGIs with concrete criteria
 - -) Institutions without an organ or a ruling body; domain specific
 - Law's legitimacy and political legitimacy: Law's edicts are not identifiable with the intention of the framer or the meaning of the text

The Rule of Law as Requisite for the "Lawness" (or Legality) of International Law

- The rule of law as opposed to the rule of man: non-arbitrariness
- The requirement of generalisability (Goodin)
 - The analogy with civil disobedience: Inadequate for states as organs of international law
 - Power disparity among states
- Fuller's inner morality of law: law as an objective standard of human conduct, not an expression of subjective will

- The enterprise of subjecting human conduct to the governance of rules (ML 106), which establishes reciprocity between the government and the citizens
 - Respect for the agency of citizens as autonomous beings; obedience to the law
- Implication of objectiveness: The search for justificatory reasons required for determining law's edict objectively (the morality of duty/aspiration)
- Assessing the legitimacy of international law
 - Reciprocity between states/no identifiable legislator: Conducive to exchange of reasons
 - States as the primary subjects of international law; Individuals as the primary unit of moral consideration (Waldron)
 - Individuals are not directly obligated by international law, though they are required to obey the state whose legal power to rule is conferred by international law
 - Autonomy of states as a prerequisite of autonomy of individuals
 - International law constitutes the state system
 - Autonomy of states: sovereignty
 - Autonomy of individuals: self-determination (collective); human rights (individual)
 - Development through finding better reasons: decolonisation, codification, etc. (substance)/international organs, etc. (institution)
- Potential challenges
 - Kurds as the largest stateless people
 - Stateless persons and refugees
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