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Legitimacy of Institutions for Conflict Resolution: an Introduction

INTRODUCTION

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ABSTRACT

A key aspect of institutions for conflict resolution is their legitimacy. What legitimacy entails, however, is essentially contested and depends in part on whether one takes a legal, normative, or social perspective. The current special issue aims to gain a better understanding of legitimacy within the context of institutions for conflict resolution by examining (1) whether and, if so, how studying institutions for conflict resolution through the lens of legitimacy can deepen our understanding of these institutions, and (2) whether and, if so, how studying legitimacy in the specific context of institutions for conflict resolution can enrich our understanding of legitimacy. After introducing the term 'institutions for conflict resolution' and detailing current approaches to legitimacy, this Introduction assesses what the potential cross-fertilisation between both concepts may look like. We do so based on the papers included in this special issue, which showcase the diversity of ways in which legitimacy of institutions for conflict resolution may be researched, as they focus on different types of conflicts that take place within different fields of law and involve different kinds of institutions. Finally, we take stock of the insights yielded by the papers included in this issue, and reflect on directions for further research on legitimacy, institutions for conflict resolution, and their cross-fertilisation.

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1. LEGITIMACY AS A KEY ASPECT OF INSTITUTIONS FOR CONFLICT RESOLUTION

Social conflicts are omnipresent, and institutions for conflict resolution aim to address them. Most people will agree that a key aspect of these institutions is their legitimacy. Some scholars, for example, maintain that the legitimacy of legal institutions is a predictor of people's willingness to cooperate with them, making legitimacy indispensable for their effectiveness.[1] Others argue that legitimacy fosters public acceptance and, as a result, the viability of institutions in the long term.[2] And there are scholars who view legitimacy as an indicator that can be used to assess the 'quality' of these institutions.[3]

That legitimacy is important for institutions of conflict resolution, is therefore widely accepted. *Why* it matters, depends on how one conceives of legitimacy. A glance at the literature shows that the concept has been the subject of critical thinking ever since it first came to the fore in the normative and social sciences,[4] which has now led to a myriad of conceptualisations and operationalisations.[5] Discussions on the meaning of legitimacy are currently taking place both within and between different scientific fields. As such, the concept of legitimacy has proven itself as a useful meeting place for multi- and inter-disciplinary research, and for empirical legal research in particular. At the same time, it is a concept whose contents are not always clear and which therefore merits further examination.

The aim of this Introduction (and the special issue in which it is printed) is to gain a better understanding of legitimacy within the context of institutions for conflict resolution. This overarching aim breaks down into two objectives. First, this issue aims to examine whether and, if so, how studying institutions for conflict resolution through the lens of legitimacy can deepen our understanding of these institutions. In other words: what does the concept of legitimacy add to current understandings and evaluations of institutions for conflict resolution? Second, this issue aims to examine whether and, if so, how studying legitimacy in the specific context of institutions for conflict resolution can enrich the concept of legitimacy. In other words: what does research on legitimacy of institutions for conflict resolution in particular add to current understandings of legitimacy?

This potential cross-fertilisation between the concept of legitimacy on the one hand and the concept of institutions for conflict resolution on the other hand is substantiated by the individual papers that make up this special issue. These papers showcase the diversity of the ways in which legitimacy of institutions for conflict resolution may be researched. That is, the papers in this issue focus on different types of conflicts (including conflicts on land issues, mining, and immigration policies) taking place within different fields of law (including criminal law, administrative law, and European law) and involving different institutions (including judges, executive bodies, and non-state authorities such as community mediation groups). Some of the papers approach legitimacy from a predominantly empirical perspective, while others adopt a mainly normative approach. Yet they all place their approach to legitimacy within a broader context, and the main argument of some of the papers is that legitimacy should be studied in a hybrid way that bridges purely empirical and purely normative perspectives.

In the remainder of this Introduction, we first briefly examine what the concept of institutions for conflict resolution entails (Section 2). Next, Section 3 examines current conceptions of legitimacy, including frequent controversies or divisions within the academic literature. Based on the individual papers of which this special issue consists, we then assess how studying legitimacy in the specific context of institutions for conflict resolution may enrich our understanding of legitimacy and, vice versa, how studying institutions for conflict resolution through the lens of legitimacy may deepen our understandings and evaluations of these institutions (Section 4).

1 See, for instance, TR Tyler, *Why people obey the law* (Princeton University Press 2006).

2 D Beetham, *The legitimation of power* (Palgrave Macmillan 2013).

3 See A Applebaum, *Legitimacy: The Right to Rule in a Wanton World* (Harvard University Press 2019). For the Dutch context, see, for example, L Noyon, *Strafrecht en publieke opinie: Een onderzoek naar de relatie tussen de strafrechtspleging en het publiek, met bijzondere aandacht voor het Openbaar Ministerie* (Boom Juridisch 2021).

4 JR Merquior, *Rousseau and Weber: Two studies in the theory of legitimacy* (Routledge & Kegan Paul 1980).

5 JV Roberts and MM Plesničar, 'Sentencing, legitimacy, and public opinion' in G Meško and J Tankebe (eds), *Trust and legitimacy in criminal justice: European perspectives* (Springer 2015).

Finally, Section 5 takes stock of the insights yielded by the special issue as well as reflecting on avenues for further research on legitimacy, institutions for conflict resolution, and their cross-fertilisation.

2. INSTITUTIONS FOR CONFLICT RESOLUTION

Institutions for conflict resolution are institutions that aim to address social conflicts. In essence, conflicts involve a clash of interests or values, either at a microlevel (for instance, between individuals), mesolevel (for example, between groups of individuals) or macrolevel (that is, at the level of society as a whole). These can be both intranational and international in nature, and may include conflicts between individuals, between individuals and corporations, between corporations, between individuals or interest organisations and the government,[6] and between different governments.

As shown by Felstiner and colleagues,[7] not every potential conflict actually becomes a conflict. That is, not all injurious experiences are perceived or 'named' as such by the persons experiencing the injury, not all perceived injurious experiences are 'blamed' on someone else, not all perceived injurious experiences that are blamed on someone else result in 'claims' to a remedy from that other person, and not all claims are (completely or partially, explicitly or implicitly) rejected and hence transformed into disputes. Viewed from this perspective – instead of from the perspective of judicial workload, for example – there may be too few conflicts rather than too many. Many potential conflicts do not transform into disputes, which means that many injurious experiences are not remedied.[8] The metaphor of a pyramid is often used to clarify this point. Only a select number of conflicts are 'named', 'blamed' and 'claimed' and thus are transformed into disputes. And not all disputes are adjudicated in formal systems of legal dispute resolution. The select number of disputes that are adjudicated form the tip of the dispute pyramid.[9]

It is important to note that this special issue focuses on social conflicts with a legal dimension, meaning that these conflicts entail legal aspects and that legal institutions might offer a solution or part of a solution. Relevant institutions include legislative, executive, and judicial authorities. These authorities are expected to provide, each in their own way, solutions to a range of societal problems, from climate change and resource conflicts to issues pertaining to migration and the multicultural society.

Although research on legitimacy traditionally focuses on state authorities, relevant institutions can also include supranational authorities (such as the European Union, as discussed by Grosfeld et al. in this special issue) as well as non-state authorities (such as the community mediation groups as discussed by Ubink and Almeida in this special issue).[10] Supranational authorities may have exclusive powers or may share their authority with states. The growing influence of supranational authorities has also revealed the potential legitimacy deficits of these institutions when compared with state authorities.[11] Non-state authorities, such as customary courts and community mediators, may operate outside the jurisdiction of the state or can be accepted and incorporated in the legal system.[12] Moreover, the increased complexity of an increasingly

6 These include disputes which were originally conflicts between two individuals (such as a victim and an offender) and which have been appropriated by the state. See N Christie, 'Conflicts as Property' (1977) 17 British Journal of Criminology 1.

7 WLF Felstiner, RL Abel and A Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming …' (1980–1981) 15 Law & Society Review 631.

8 See also Christie (n 6) and CR Albiston, LB Edelman and J Milligan, 'The Dispute Tree and the Legal Forest' (2014) 10 Annual Review of Law and Social Science 105.

9 Albiston et al. (n 8) argue that the metaphor of a pyramid should be abandoned because the many forms of conflict resolution are diverse and sometimes interrelated. Moreover, they maintain that conflict resolution is more in flux than a pyramid denotes. Albiston et al. propose the metaphor of a tree to clarify these characteristics of conflict resolution.

10 See also A Follesdal, 'Survey Article: The Legitimacy of International Courts' (2020) 28 *Journal of Political Philosophy* 476 or N Torbisco-Casals, 'The legitimacy of international courts: The challenge of diversity' (2021) 52 Journal of Social Philosophy 491.

11 See, for example, W Sadurski, M Sevel and K Walton (eds), *Legitimacy: The State and Beyond* (Oxford University Press 2019).

12 G Swenson, 'Legal Pluralism in Theory and Practice' (2018) 20 International Studies Review 438.

multipolar system of non-state, state and supra-state institutions of power raises questions about how the legitimacy of one institution affects the legitimacy of other institutions.

The 'institution' (being the object of legitimacy) may be a regulation or procedure rather than a (state or non-state) authority. In particular, when alternative regulations or procedures for handling conflicts are introduced, new questions relating to legitimacy may arise – for instance, with regard to how these new institutions fit into pre-existing governmental and legal schemes, and how they affect the legitimacy of existing institutions. In addition, the object of legitimacy may be a singular authority (such as an individual judge or politician), the organisational body of which this individual is a part (such as the judiciary or Parliament), or the system as a whole (such as the legal system or the political system).

Because legitimacy is commonly understood as the right to govern (as we explain in Section 3), applying the concept of legitimacy does imply that there is a vertical power relation between institutions and their addressees within which authorities can impose decisions. Hence, our main focus in this special issue is on institutions with some degree of verticality, although we note that these are far from being the only institutions for conflict resolution. As detailed by Albiston and colleagues, conflict resolution can take all kinds of forms, each with different institutions involved.[13] Institutions have been broadly defined as 'the rules of the game in a society'[14] or 'integrated systems of rules that structure social interactions'[15]. These institutions entail both the rules themselves and the institutions that create, communicate, and enforce these rules, and can be either formal (such as courts and constitutions) or informal (such as customs and religious beliefs that bring about shared expectations of behaviour).[16] Examples of institutions for conflict resolution that lack verticality but play an important role in resolving conflicts include various forms of alternative dispute resolution (ADR).

In sum, this special issue's main focus is on institutions (broadly interpreted) which may offer a solution or partial solution to social problems or conflicts with a legal dimension, and which include some degree of verticality. The next section focuses on the question of how to conceive of these institutions' legitimacy.

3. LEGITIMACY

Legitimacy is often defined as the right to rule, as the rightfulness of power, or as the authority that elevates naked power into rightful authority.[17] Labelling a power relation as legitimate is to say that this power relation is – or ought to be – acceptable for both the power holder and the subordinates. 'Where force is used, authority itself has failed' is an oft-cited phrase by Hannah Arendt.[18] Legitimate authority is therefore authority that does not need to rely solely on force to be sustainable. But so much for the scholarly consensus. From here on disagreements arise, such as how to determine what is rightful or how to decide what is acceptable. Indeed, the notion of legitimacy is widely considered to be an essentially contested concept.[19] Claims that a particular institution is legitimate or illegitimate will often be prone to the criticism that they are premised on a too narrow, flawed or otherwise false conception of legitimacy.

Some scholars limit their conception of legitimacy to one particular field of science. For example, within the literature on perceived procedural justice,[20] the concept of legitimacy comes with a

13 Albiston, Edelman and Milligan (n 8).

14 DC North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1990), 3.

15 GM Hodgson, 'On Defining Institutions: Rules Versus Equilibria' (2015) 11 Journal of Institutional Economics 501.

16 G Helmke and S Levitsky, 'Informal Institutions and Comparative Politics: A Research Agenda' (2004) 2 Perspectives on Politics 725.

17 See, for example, Beetham (n 2), JM Coicaud, *Legitimacy and politics: A contribution to the study of political right and political responsibility* (Cambridge University Press 2002).

18 H Arendt, *Between past and future: Six exercises in political thought* (Meridian Books 1968) 92–93.

19 A Hurrelmann, S Schneider and J Steffek, 'Conclusion: legitimacy – making sense of an essentially contested concept' in A Hurrelmann, S Schneider and J Steffek (eds), *Legitimacy in an age of global politics* (Palgrave Macmillan 2007).

20 EA Lind and TR Tyler, *The social psychology of procedural justice* (Plenum 1988), TR Tyler and EA Lind, 'A relational model of authority in groups' in MP Zanna (ed), *Advances in experimental social psychology*, vol 25 (Academic Press 1992).

clear set of conventions, operationalisations and research techniques, offering researchers a shared space in which the rules of the game are relatively clear. These studies have yielded important insights into the antecedents and consequences of perceived legitimacy, pointing to the importance of people's perceptions of procedural fairness and the relation between legitimacy and compliance with the law.[21] Procedural justice research is criticised by scholars outside of this field, however, for overemphasising the importance of direct contact with the justice system[22] (while people also form their opinions on the basis of vicarious sources), for being normatively empty, and for neglecting substantive aspects of legitimacy.[23]

Thus, scattered throughout the academic literature are research areas that are characterised by internal consensus on the content of legitimacy but that do not fully engage with insights into legitimacy provided by the rest of the literature. In between, however, there is just *terra nullius* with no clear rules on how to conceptualise and operationalise legitimacy or what research techniques to apply. One way to bring clarity in research on legitimacy may be to map frequent controversies or divisions in current thinking about legitimacy. Section 3 aims to do this by distinguishing between normative and empirical approaches, substantive and procedural approaches, and static and dynamic approaches to legitimacy.[24] These distinctions help to clarify frequent controversies or divisions that every researcher will encounter when engaging with scholarship on the legitimacy of institutions. In Section 4, we examine how some of these controversies or divisions may be nuanced and how current conceptions of legitimacy may be enriched by research on legitimacy in the specific context of institutions for conflict resolution.

3.1 NORMATIVE VERSUS EMPIRICAL APPROACHES TO LEGITIMACY

The value versus fact approach to legitimacy is one of the most well-described divisions in the legitimacy literature. It touches on the heart of the matter: how to determine if a certain power holder has the right to rule? This question can firstly be answered from a normative perspective: *Ought* the exercise of power by a certain power holder be accepted by its subordinates? A separate question is an empirical one: *Is* a certain power holder accepted by its subordinates?

Scholars who adopt a normative perspective are generally concerned with the *ought* question, and typically answer the question as to what power is rightful by deploying a normative framework. This normative framework might include a hypothetical social contract, the principle of utility, the categorical imperative, natural law or, in a more legal doctrinal approach, a written (human rights) convention, such as the European Convention on Human Rights (ECHR). Put simply, a specific power relation or a specific legal provision is considered rightful if it does not contravene the essential criteria that can be deduced from these frameworks. Social reality is in part irrelevant and in part subordinate to these normative axioms.

Scholars who adopt an empirical perspective, on the other hand, are interested in the question as to what power is accepted by the people who are governed. That is, these scholars focus on what people believe to be legitimate: *Legitimitätsglaube* in Weberian terms.[25] The question how to determine what people accept (or perceive as legitimate) has, however, only been a starting point for further academic disagreements. In part these are about the weight that is often allotted to acceptance as such: some theorists argue that critical oversight is more important to legitimacy than passive approval.[26] At a fundamental level, all empirical approaches are criticised for being normatively empty. Any regime, even one that tramples on human rights,

21 See, for example, Tyler (n 1).

22 Although there are important exceptions that do focus on people's more general impressions of authorities' procedural fairness; see e.g. J Sunshine and TR Tyler, 'The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing' (2003) 37 Law & Society Review 513.

23 See, for example, DJ Smith, 'The foundations of legitimacy' in TR Tyler (ed), *Legitimacy and criminal justice* (Russel Sage Foundation 2007).

24 See Noyon (n 3) for a more detailed discussion.

25 M Weber, *Economy and society: An outline in interpretative sociology* (University of California Press 2013).

26 P Rosanvallon, *Democratic legitimacy: Impartiality, reflexivity, proximity* (Princeton University Press 2011).

may be empirically 'legitimate' as soon as it succeeds in convincing the subordinates of its own legitimacy.[27]

3.2 SUBSTANTIVE VERSUS PROCEDURAL APPROACHES TO LEGITIMACY

Another well-described division in the literature separates procedural and substantive conceptions of legitimacy. This distinction cuts through empirical and normative conceptions of legitimacy, as there are substantive and procedural lines of thought in both fields.

In a substantive line of reasoning, a power relation might be deemed legitimate if certain principles are served by the exercise of authority. At an abstract level, these principles might be equality or liberty. At a less abstract level, examples could be proportionality in (criminal) sentencing, or legislation that does not disadvantage certain (ethnic) minorities. How to determine what the relevant principles are depends on whether one takes an empirical or a normative approach. In a purely empirical approach, scholars might ask citizens of a given population what principles they consider to be most important.[28] In a purely normative approach, scholars may decide on these principles by constructing an idealised normative framework that does not take into account any empirical considerations.

Procedural legitimacy, on the contrary, is not about the substantive dimensions of the exercise of authority, but about the fairness of the process through which that authority is exercised. Researchers interested in procedural justice might, for example, examine to what extent participants perceive a trial as fair or – from a normative point of view – to what extent a trial corresponds to certain norms of fair adjudication, such as Article 6 ECHR. Or, if not trials but legislation is the object of concern, one might inquire whether the legislative process is perceived as legitimate by society or whether this process can be justified in normative terms.[29]

While substantive approaches to legitimacy have been criticised for only providing vague principles that are difficult to operationalise, procedural approaches have been criticised for the possibility that regimes which are on face value evidently illegitimate might acquire a legitimate appearance by employing procedures that people perceive as fair. An example is the legal system in South Africa during apartheid, which provided procedures that were perceived as fair but, at the same time, perpetuated apartheid and endowed it with a laurel of legitimacy.[30] A frequently heard objection against the distinction between procedural and substantive approaches to legitimacy, however, is that it is a false opposition. After all, judgements about the fairness of a procedure frequently presuppose certain – substantive – principles. Indeed, a democratic legislative process can only be judged, for example, if someone first accepts certain substantive axioms (such as equality) to be a viable presupposition.

3.3 STATIC VERSUS DYNAMIC APPROACHES TO LEGITIMACY

A final controversy that we mention here relates to the question of where legitimacy 'resides'. To put it bluntly, in the classical normative conception of legitimacy, legitimacy is viewed as an attribute of a power holder. Here, power holders are legitimate when they perform well according to certain predefined norms. Legitimacy thus resides *in* the power holder, and anything external to that power holder is irrelevant. In the classical empirical conception, however, legitimacy is something that resides in the heads of the subordinates. They, eventually, decide about the legitimacy of the actors that exercise power over them. In both approaches, legitimacy is conceived of as a static state of affairs: something which is present either within the power holder or within the heads of the subordinates.

27 See, for example, W Hinsch, 'Justice, legitimacy, and constitutional rights' (2010) 13 Critical Review of International Social and Political Philosophy 39, OW Lembcke, 'The dynamics of legitimacy: A critical reconstruction of Max Webers's concept' in L Huppes-Cluysenaer, R Knegt and OW Lembcke (eds), *Legality, legitimacy & modernity: Reconsidering Max Weber's concept of domination* (Reed Business 2008).

28 See Beetham (n 2) and Coicaud (n 17).

29 See, for example, J Habermas, *Legitimation crisis* (Heinemann 1980) and JS Dryzek, *Deliberative democracy and beyond: Liberals, critics, contestations* (Oxford University Press 2002).

30 See, for instance, S Ellmann, 'Law and legitimacy in South Africa' (1995) 20 Law & Social Inquiry 407, doi: 10.1111/j.1747-4469.1995.tb01068.x. Cf. S Karstedt, 'Trusting authorities: Legitimacy, trust and collaboration in nondemocratic regimes' in J Tankebe and A Liebling (eds), *Legitimacy and criminal justice: An international exploration* (Oxford University Press 2013).

These static conceptions of legitimacy can be contrasted with more dynamic approaches. First, because most contemporary societies are pluriform rather than homogeneous, authorities' legitimacy may often be earned in one group at the expense of their legitimacy among other groups.[31] For example, harshly punishing deviant behaviour can – in theory – increase the legitimacy of the criminal justice system amongst a majority of society. But if the norm violated is not endorsed by everyone in society, or if certain groups – for example, those directly affected – perceive the punishments as disproportionate or inhumane, it may have adverse effects on the perceived legitimacy within certain sectors of the population. Second, it has become increasingly clear that legitimacy cannot be built or maintained in a social or historical vacuum. Instead, any power relation has to deal with social traumas, historical sensitivities, and so forth. Certain governmental actions may be perfectly legitimate in one society, but illegitimate in another, because they touch on certain traumas that a society has not yet overcome, or because they do not repair certain inequalities that have arisen over time.[32]

Following this line of reasoning, legitimacy should not be seen as something static that can be achieved or moved away from.[33] Rather, legitimacy should be conceived of as something dynamic, located neither solely in the power holder nor solely in society. In dynamic conceptions of legitimacy, legitimacy takes shape in an ongoing dialogue between power holders and societal actors in a historically and socially determined context. This, of course, introduces a multitude of variables into any analysis of legitimacy, including the legitimacy of institutions for conflict resolution.

4. LEGITIMACY, INSTITUTIONS FOR CONFLICT RESOLUTION, AND THEIR CROSS-FERTILISATION

4.1 HOW LEGITIMACY CAN DEEPEN OUR UNDERSTANDING OF INSTITUTIONS FOR CONFLICT RESOLUTION

It follows from the papers included in this special issue that there are at least two ways in which adopting the lens of legitimacy may enhance our understanding of institutions for conflict resolution. *First*, and most obviously, legitimacy provides a helpful framework in light of which institutions for conflict resolution can be examined and evaluated. That is, concrete institutions may be considered as more legitimate or less legitimate, either in terms of meeting (or failing to meet) certain normative criteria or in terms of societal acceptance (or lack of acceptance) of authority.

For instance, Boone and Kox conducted ethnographic fieldwork to examine unauthorised migrants' perceptions of the legitimacy of the migration system. They found that, even though these migrants do not necessarily feel that they have been treated procedurally unfairly, they mostly perceive the migration system to be illegitimate because it fails to align with their fundamental values regarding safety, the best interests of the child, and liberty. According to Boone and Kox, these findings demonstrate that operationalisations of empirical legitimacy in the current literature fall short in cases of severely conflicting societal interests in which there is no alignment between the moral values of authorities and those of subordinates. They ascribe this shortcoming to the overreliance, in current writings on empirical legitimacy, on deductive survey research focusing merely or predominantly on issues of procedural justice. Their work shows how a more inductive approach can focus our attention on, as yet, underexamined aspects of legitimacy, such as moral alignment, and the lack of perceived legitimacy which such an approach may reveal.

The paper by Khadim, too, provides an examination of concrete institutions for conflict resolution from the perspective of legitimacy. Building on previous theoretical work, she advances constituent power as an analytical approach to understanding and assessing institutional legitimacy in resource conflicts. Central to her argument is the observation that, if constituent power (that is, the formation of a constitutional regime) lacks democratic legitimacy, so may

31 Cf. A Bottoms and J Tankebe, 'Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice' (2012) 102 Journal of Criminal Law and Criminology 119.

32 See, for example, T Fossen, 'Taking stances, contesting commitments: Political legitimacy and the pragmatic turn' (2013) 4 Journal of Political Philosophy 426.

33 Lembcke (n 27).

constituted power (that is, the legal and political institutions created by the constitutional regime). Her research on Canadian oil sands institutions points to several potential problems regarding these institutions' democratic legitimacy, which may be rooted in deeper problems regarding the democratic legitimacy of the constitutional regime in which the institutional framework is embedded.

An example of institutions for conflict resolution that are generally considered legitimate is provided by Ubink and Almeida. They examined the empirical legitimacy of community mediation groups (CMGs) handling land conflicts in South Sudan and its implications for state court legitimacy. Based on qualitative semi-structured interviews with various actors involved in these mediations (including mediators, clients, and members of the broader community), Ubink and Almeida show that CMGs are largely perceived to be legitimate. This is due to the procedural fairness which they offer as well as the observation that they provide a faster and more accessible way of resolving land disputes than the state court system. Furthermore, because CMGs educate people about their legal rights and emphasise laws and legal procedures, they give empirical legitimacy to state law.

A *second* way in which adopting the lens of legitimacy may enhance our understanding of institutions for conflict resolution is that it directs our attention to aspects other than the mere problem-solving capacities of these institutions. That is to say, the term 'institutions for conflict resolution' may imply a focus on these institutions' output – that is, the extent to which conflicts are resolved effectively and efficiently. Studying institutions for conflict resolution from the perspective of legitimacy, however, points to other ways in which to understand and evaluate these institutions – for instance, in terms of the procedural fairness they offer (Ubink and Almeida), their constitutional foundations (Khadim), or the extent to which public and institutional values align (Boone and Kox). Effectiveness and institutional performance can also contribute to perceptions that authorities are legitimate and can be trusted,[34] but are far from the only yardstick against which these authorities can be judged, as illustrated by the papers included in this special issue.

4.2 HOW STUDYING INSTITUTIONS FOR CONFLICT RESOLUTION CAN ENRICH OUR UNDERSTANDING OF LEGITIMACY

Based on the papers that are part of this issue, we see at least four ways in which studying the legitimacy of institutions for conflict resolution in particular may add to our understanding of legitimacy. *First*, because of its focus on specific social problems rather than expansion of intradisciplinary knowledge or dogmatism, research on institutions for conflict resolution and their legitimacy will often call for a combination of empirical and normative approaches. This fits with more hybrid conceptualisations of legitimacy that are sometimes put forward in the current literature.[35] Indeed, adopting a purely normative or a purely empirical perspective on legitimacy paints only part of the picture, and it may not even be possible to strictly separate both perspectives. After all, normatively 'optimal' power relations have to account for reality (since they need real support to be sustainable). Vice versa, reality must be legitimate in a normative sense, and people may often derive the standards against which they assess institutional legitimacy from existing normative frameworks.

In her research on complaints against non-prosecution in cases involving societal conflicts (for example, relating to freedom of speech of politicians or police violence against ethnic minorities), Koning advances such a hybrid conceptualisation of legitimacy. Her paper asks how courts can handle these cases in a legitimate way if the various audiences involved – including victims, offenders, and different groups within society – differ in their interpretation of the conflict or problem. Through a media analysis of four socially sensitive court cases, she examines the dynamic and dialogical nature of legitimacy by analysing criminal justice authorities' claims to legitimacy and different audiences' responses to these claims. Koning argues that both empirical research and normative research is needed to adequately understand democratic legitimacy, as such legitimacy resides neither solely in subordinates' heads nor solely in the

34 See, for instance, Sunshine and Tyler (n 22).

35 For example, Bokhorst advances a conceptualisation of legitimacy that entails legal, ethical, political and social dimensions. See AM Bokhorst, *Bronnen van legitimiteit: Over de zoektocht van de wetgever naar zeggenschap en gezag* (Boom Juridische Uitgevers 2014).

objective qualities of authorities. Rather, she puts forward a conceptualisation of democratic legitimacy as something that is constructed through a constant dialogue involving legitimacy claims and responses, and explores how courts' responses can be made more democratic while accounting for the normative frameworks in which courts operate.

Other papers in this issue focus on integrating normative and empirical approaches to legitimacy as well. This is the central aim of the contribution by Riesthuis, which focuses on theories of adjudication. Taking as his point of departure the observation that these theories contain both descriptive and prescriptive or normative elements, as they explain both how judges decide cases and how they should decide cases, he argues that legitimacy can provide a useful lens to distinguish between different normative accounts of judicial decision-making. Through the examples of Hart's narrower conception of legitimate adjudication (according to which judicial decision-making is legitimate when it conforms to the law) and Dworkin's broader conception of legitimate adjudication (whose theory of judicial decision-making integrates a moral dimension), Riesthuis shows that these theories entail conceptual claims whose empirical viability is seldom examined. In the remainder of his contribution, he proposes ways to make theories of legitimate adjudication more empirically informed.

Another paper in this issue that proposes ways to integrate empirical insights on legitimacy into the normative domain of law is the contribution by Grosfeld, Cuyvers and Scheepers. Grosfeld et al. argue that, as EU institutions are increasingly being asked to address societal problems, their need for legitimacy becomes more evident. The first part of Grosfeld et al.'s contribution focuses on social psychological insights on people's legitimacy perceptions and points to various gaps in current empirical conceptualisations, operationalisations, and explanations of legitimacy. Among other things, the authors disentangle legitimacy from various related concepts (such as trust, support, compliance and acceptance) and lay the foundations for a theoretical model to explain why people perceive EU institutions as either more legitimate or less legitimate, emphasising the importance of identity and shared values. The second part of their paper offers ideas on how these insights could be incorporated in EU law. As translating these insights into policies, legal reform, and institutional design requires legal knowledge, the authors argue for collaborations between lawyers and social scientists.

A *second* way in which studying the legitimacy of institutions for conflict resolution may add to our understanding of legitimacy is that it may give further content to some of the dimensions of legitimacy discussed in Section 3 of this Introduction. For instance, the paper by Koning provides depth to the notion of legitimacy as a dialogue that involves legitimacy claims and responses, as she shows that (at least in socially sensitive cases) there may often be multiple participants in these 'dialogues'. Indeed, the conflicts which institutions for conflict resolution aim to address will often involve not only a single citizen or group of citizens and the state, but other parties as well (for instance, other citizens or groups of citizens), who may differ in their interpretation of the conflict.

Similarly, the paper by Boone and Kox provides depth to the notion of substantive legitimacy and the operationalisation of legitimacy as moral alignment. As explained in Section 3, substantive approaches to legitimacy focus on whether certain principles are served by the exercise of authority, whereas procedural approaches examine the fairness of the process through which authority is exercised. These substantive approaches have been criticised for only providing vague principles that are difficult to operationalise. By showing exactly which moral values are not respected by migration authorities, according to the unauthorised migrants who participated in their interview study, and how this lack of moral alignment impacts these migrants' legitimacy perceptions, Boone and Kox give further content and concretisation to substantive approaches to legitimacy.

Third, studying the legitimacy of institutions for conflict resolution may add to our understanding of legitimacy because it provides more insight into the different objects of legitimacy. In most of the legitimacy literature, the object of concern is a power relation between a power holder and its subordinates. The prototypical example is a nation state with its government and a population. Research on the legitimacy of institutions for conflict resolution, as demonstrated by the papers included in this issue, makes clear that the object of legitimacy may take many more forms than only the nation state and its government. In addition to studying the legitimacy of concrete regulations and procedures, one may examine the legitimacy of judges or courts

(Koning, Riesthuis, Van Dijk), executive authorities (Boone and Kox, Khadim), and supranational (Grosfeld et al.) and other non-state authorities (Ubink and Almeida), among others. As such, it becomes clear that a population is not merely in an authority relationship with one government, but with a multipolar power structure, where the legitimacy of the different 'poles' does not only interact with the subordinates, but also with other relevant 'poles'. In this way, a focus on institutions for conflict resolution can bring diversity to research on legitimacy.

Fourth, a focus on institutions for conflict resolution may reveal innovative ways to conduct research on legitimacy. For example, in his contribution, Van Dijk explores alternative methodologies to examine the perceived legitimacy of courts. Pointing to problems with current survey research on this topic, such as the risk of social desirability bias and the possibility that people may express support for an institution yet fail to behave in accordance with that support, he proposes to examine behavioural aspects rather than mere statements. According to Van Dijk, ideally this would entail examining compliance with judicial decisions and respect for independence (as demonstrated, for instance, by politicians refraining from expressing their opinions on cases which are still under judicial scrutiny). When this is not possible due to a lack of available data, one may examine judges' perceptions of such behaviour. The author illustrates this approach by presenting concrete research findings on judicial legitimacy in various European countries, thus advancing new ways to study empirical legitimacy.

5. DIRECTIONS FOR FURTHER RESEARCH

Together, the papers included in this special issue show that there are various ways in which studying legitimacy in the specific context of institutions for conflict resolution may enrich our understanding of legitimacy and, vice versa, how studying institutions for conflict resolution through the lens of legitimacy may deepen our understandings and evaluations of these institutions. They also provide points of departure for future research on this topic, which may further enhance our understandings of legitimacy, institutions for conflict resolution, and their cross-fertilisation.

First, several of the papers included in this issue show the added value of researching empirical legitimacy through qualitative methods and research techniques, such as interviews, focus groups, observations, and thematic analysis. Qualitative findings can corroborate findings of quantitative studies, such as the importance of procedural justice for fostering perceptions of legitimacy (as shown by Ubink and Almeida). Yet, due to their more inductive nature, qualitative approaches can also complement quantitative findings in important ways. This is emphasised by Grosfeld et al., who argue that people's norms and expectations concerning the EU's authority may best be examined through qualitative research. It is also demonstrated by Boone and Kox, who attribute the underexposure of moral alignment as an operationalisation of perceived legitimacy to the overuse of quantitative surveys focusing predominantly on procedural justice. Arguably, mixed-methods research that combines qualitative and quantitative approaches provides the most valid insights on empirical legitimacy, as it allows for triangulation.[36] Such research may also use innovative methods for assessing legitimacy perceptions to counter shortcomings of more traditional approaches, as illustrated by Van Dijk.

Second, the insights provided by papers included in this issue (e.g. Riesthuis, Koning, Grosfeld et al.) point to the importance of integrating empirical and normative perspectives in legal scholarship. Although some legitimacy authors have advanced hybrid conceptions of legitimacy that combine empirical and normative aspects in the current literature, many academic discussions on legitimacy are still taking place in disciplinary silos. Integrating empirical and normative approaches in future research on the legitimacy of institutions for conflict resolution will yield a more holistic understanding of legitimacy. This can also help to avoid a sole focus on instrumental or consequentialist conceptions of legitimacy (which emphasise the effects of perceived legitimacy on cooperation and compliance and do not take into account the intrinsic value of legitimacy) or, vice versa, a sole focus on deontological conceptions of legitimacy (which emphasise the value of legitimacy as an indicator of the quality of power relations and do not acknowledge that institutions need actual societal support to be sustainable).

36 JA Maxwell, *Qualitative research design: An interactive approach* (Sage 2013); J Robbennolt, 'Evaluating empirical research methods: Using empirical research in law and policy' 81 Nebraska Law Review, 777.

Although empirical and normative approaches to legitimacy entail different kinds of questions that require the use of different kinds of research methods, integration of these approaches may be furthered by the observation that empirical operationalisations and predictors of legitimacy often have normative counterparts, and vice versa. For instance, normative accounts of input legitimacy, throughput legitimacy, and output legitimacy (as described by Grosfeld et al. in this issue) may easily be compared to the empirical notions of voice and process control,[37] other procedural justice-enhancing factors such as unbiased and consistent decision-making,[38] and effectiveness.[39] This is hardly surprising, as normative conceptions of legitimacy and the quality criteria which they entail are likely to be influenced by what people consider to be legitimate empirically, and empirical conceptions of legitimacy are likely to be influenced by normative standards derived from ethical theories or principles of law. Nevertheless, noting such similarities can make it easier to combine empirical and normative perspectives in future research, thus advancing an interdisciplinary understanding of legitimacy of institutions for conflict resolution.

COMPETING INTERESTS

The authors have no competing interests to declare.

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37 R Folger, 'Distributive and Procedural Justice: Combined Impact of "voice" and Improvement on Experienced Inequity' (1977) 35 Journal of Personality and Social Psychology 108; J Thibaut and L Walker, *Procedural Justice: A Psychological Analysis* (1975 Erlbaum).

38 E.g. SL Blader and TR Tyler, 'A Four-Component Model of Procedural Justice: Defining the Meaning of a "Fair" Process' (2003) 29(6) Personality and Social Psychology Bulletin 747.

39 E.g. Sunshine & Tyler (n 22).

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