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Table of Contents

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Editorial

Current Challenges to the Legitimacy of International Economic and Financial Arrangements

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Abstract
The importance of legitimacy to international arrangements is addressed, as are various approaches to the study of legitimacy. In so doing, attention is paid to important concepts that feature throughout the various contributions, namely legitimacy and illegitimacy, legitimation and delegitimation, audiences and consent, and the form and function of institutional change.

Keywords
delegitimation; institutional change; international arrangements; legitimacy

Issue
This editorial is part of the issue "Legitimacy and Global Economic Ties" edited by Nienke de Deugd (University of Groningen) and Gerda van Roozendaal (University of Groningen).

1. Introduction

The Presidency of Donald J. Trump has shown how easily the legitimacy of international arrangements can be called into question and how far-reaching the consequences can be. Under Trump, the US retreated from international agreements and commitments and questioned its membership of a number of international organizations (Debre & Dijkstra, 2020).

There is no shared understanding of what legitimacy means at the international level, nor of how it is achieved. Therefore, by taking into account the latest research on international legitimacy, this editorial presents an overview of approaches to studying legitimacy with the twin goals of improving our understanding of the legitimacy of international arrangements, as well as of the consequences of delegitimation for institutional change.

This editorial begins by explaining the importance of and challenges to the legitimacy of international arrangements: a topic taken up by the various individual articles in this thematic issue. Then, the various approaches to the study of legitimacy are discussed. Here, attention is paid to important concepts that feature throughout the various contributions, namely legitimacy and illegitimacy, legitimation and delegitimation, audiences and consent, and institutional change in response to challenges. This editorial will then serve as the background to a variety of articles on the legitimacy of international economic and financial arrangements for this thematic issue of *Politics and Governance*.

The notion of "international arrangements" as used in this editorial refers to both formal and informal forms of international and transnational collaboration, including organizations, institutions, regimes, agreements, and networks. Throughout this thematic issue, beliefs, values, and norms are used interchangeably, even though they relate in different ways to the formation of attitudes and behaviour.

2. Legitimacy Challenged

While Trump's Presidency placed the issue of legitimacy at the top of the international agenda, the legitimacy of international arrangements has been scrutinized for much longer. As Hooghe et al. (2019) argue, economic liberalization since the 1990s has created intensified international cooperation—for example, through the establishment of the WTO—which was accompanied by increased domestic political contestation over what international cooperation should look like. Intensified international cooperation has brought with it new power distributions, something that, in turn, has given rise to extensive discussion. This has been demonstrated by the debate between radical right-wing nationalist ideas and radical leftist views about the shape that international cooperation should take, and even whether it is warranted at all. These clashes of perception are highlighted by disputes about the legitimacy of trade agreements, of the European Union (EU), and of the funding of international organizations. These disputes have, in turn, led to the delegitimation of international organizations and arrangements (Hooghe et al., 2019, pp. 732–733), such as is the case with the EU investment court system (Diependaele et al., 2019) within the WTO (Elsig, 2007; Howse & Nicolaidis, 2003; Reid, 2020), and within free trade agreements (Theuns, 2019). This trend has been accelerated by the current Covid-19 crisis, where for example, the Trump administration accused the WHO of being too susceptible to influence from China (Jenkins & Jones, 2020, p. 22). In general, the Covid-19 crisis has added further relevance to these issues, as new vulnerabilities have come to the fore, such as dependency on other countries for essential goods and new policies for attracting and regulating investments, to name just a few (see Campbell-Verduyn et al., 2019).

3. The Importance of Legitimacy

According to Beetham (1998), "[l]egitimacy refers to the rightfulness of a power holder or system of rule." The legitimacy of international arrangements is of pivotal importance to their functioning, as Buchanan and Keohane (2006, p. 407) point out, because international institutions encourage cooperation while at the same time posing limits on (democratic) societies. What international cooperation offers is the promise of dealing with shared problems effectively and transparently and, increasingly, the prospect of doing so democratically—thereby showing its relevance to states and other stakeholders (Dingwerth et al., 2020; Tallberg & Zürn, 2019). This way, international organizations can convince states to follow the agreed-upon rules (Tallberg & Zürn, 2019, p. 582). However, states are not the only stakeholders in international arrangements. The notion of audiences (including constituencies and observers) is often used to capture the wide variety of actors involved and affected (Bexell & Jönsson, 2018; Tallberg & Zürn, 2019). Besides states, constituencies also involve individuals in states, those that represent the states, perhaps the staff of the arrangements, and maybe even those involved in global private and hybrid arrangements. The notion of observers (outside the authority-relationship characterizing an arrangement) refers to civil society actors, media, and non-member states (Bexell & Jönsson, 2018, pp. 124–132).

Securing legitimacy is seen as a long-term investment rather than an instrument to fulfil short-term needs. This long-term investment means that in the eyes of those extending legitimacy to an organization, there is continued support even if an organization (in the short-term) does not act in the self-interest of those concerned (Tallberg & Zürn, 2019, p. 587). As Bäckstrand and Söderbaum (2018) show, it is created (and reduced) through a variety of means, such as behavioural (e.g., opinion polls, taken by the institution itself, or lobbying activities to support the arrangement, as done by others), institutional (e.g., including outside actors), and discursive practices (e.g., through the targeted spread of information).

As Zaum (2017) and Tallberg and Zürn (2019, p. 582) point out, the costs of support through legitimacy are lower than the costs of creating and maintaining support through material benefits or coercion, and besides that, international organizations often lack such means to provide benefits of enforcement. In other words, legitimacy also matters because international organizations do not usually have the resources to reward or punish their members to enforce compliance. Rather, for an organization to function and its members to adhere to the rules of the game, it needs to be regarded as legitimate (Zaum, 2017, pp. 1111–1112).

4. Approaches to Legitimacy

This editorial seeks to select standards that can provide a framework to assess the legitimacy of an international arrangement. Traditionally, two broad approaches to legitimacy are distinguished in the literature. Firstly, the sociological approach (also referred to as the empirical or descriptive approach), whose origins lie in the work of the German sociologist Max Weber, defines legitimacy in terms of whether people believe an arrangement to be legitimate. Second, there is a normative, philosophical approach, referring to the question of whether an arrangement has the right to rule (Beetham, 2013, pp. 4–9; Buchanan & Keohane, 2006; Dietz et al., 2019, pp. 751–752).

An example of this first approach is offered by Tallberg and Zürn (2019) in a recent special issue of *The Review of International Organizations*, devoted to the legitimacy of international organizations. Tallberg and Zürn propose an empirical approach and define legitimacy as "beliefs of audiences that an IO's authority is appropriately exercised, and legitimation as a process of justification and contestation intended to shape such beliefs" (Tallberg & Zürn, 2019, p. 583). The focus of Tallberg and Zürn is on developing a framework that should help us understand how international organizations obtain support and lose legitimacy, namely through their own features (authority, procedure, and performance), thus affecting the process by which legitimation takes place. These features have consequences for how organizations present themselves to their audiences and how their audiences discuss them, which subsequently affects whether the audience believes the organization is legitimate. Dingwerth et al. (2020) have studied how and why international organizations increasingly use democratic narratives, concluding that organizations that are more subject to media scrutiny and to protest by those affected by their policies are more responsive to the need for democratic legitimation. Along broadly similar lines, Hooghe et al. (2019) look at the role of national political contestation in processes that lead to a situation of non-legitimacy. An example of this approach is also found in this thematic issue's article by Metinsoy (2022), where it is shown how the International Monetary Fund (IMF) loses legitimacy when taking responsibility for labour market reforms. What these studies have in common is that a decrease in the legitimacy of international arrangements is equated with a lack of support from those affected by them.

Hurd formulates a critique on the model designed by Tallberg and Zürn and points to the lack of attention to the role of politics by arguing that such a "narrow" approach makes "legitimation...a tool of social control"—something that should be remedied by bringing in politics in the study of legitimacy (Hurd, 2019, pp. 719–720). In Hurd's view, more attention should be paid to what international organizations do and how they perform on the output side than the framework of Tallberg and Zürn allows. As Hurd (2019) maintains, it is not the way in which an international organization manages to increase its legitimacy (and with it the compliance to its rules) that counts. Rather, an organization should earn its legitimacy by having a positive impact on those affected by its policies. Hurd argues that an a-political view of legitimacy "risks being more of a marketing strategy than an engagement with its substantive effects in the world" (Hurd, 2019, p. 725). Put differently:

> The legitimacy dynamics around international organizations are no doubt in part attributable to IOs' internal structure, media strategies, channels of participation and voice, and other features. But they are also certainly connected to how they affect the distribution of resources, power, and opportunities for people. (Hurd, 2019, p. 727)

Hurd's line of reasoning echoes the critique of Beetham (2013) on Weberian approaches. Beetham argues that the focus on beliefs in the conception of legitimacy and the process by which the creation of legitimacy takes place (i.e., legitimation) is fraught with problems. Beetham (2013, p. 9) argues that by employing a sociological approach, social scientists might equate a regime's legitimacy to the marketing abilities of the powerful. In a similar vein, Zaum (2017, pp. 1115–1116) points to the resources that international organizations have at their disposal to co-create constituent's beliefs. In this thematic issue, Linsi's (2022) study illustrates the influence of economic narratives on individual beliefs. However, what matters, according to Beetham, is that "[a] given power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of* their beliefs" (2013, p. 11, emphasis in the original).

Many studies about the legitimacy of international arrangements are examples of the second approach to the concept. As pointed out, this normative, philosophical approach revolves around the development of normative standards to help assess the legitimacy of a regime, irrespective of whether people believe in said legitimacy—and even though the immediate motive to discuss norms may be the audience's decreasing belief in the legitimacy of such an arrangement. They engage in assessing legitimacy along a yardstick of norms. It links how an arrangement performs to the question of how it *should* perform. Examples of such studies are provided by Howse and Nicolaidis, who suggest that reforms of the WTO should take into account "institutional sensitivity, political inclusiveness, and top-down empowerment" (2003, p. 76), and by Diependaele et al. (2019) on the EU's investment arbitration facility. Other examples of a normative approach to international arrangements come from Buchanan and Keohane (2006), who focus on the question of whether an institution has the right to rule. Building upon their work, Scherz (2019) has developed a model to assess the legitimacy of international institutions that takes into account the different degrees of political power the institutions concerned exercise.

The main criticism levelled against the use of a normative yardstick to assess legitimacy is that it uses a "universalizing claim: it is not the principles that happen to pertain in a given society that are sufficient, but those that any rational person, upon considered and unbiased reflection, would have to agree to" (Beetham, 2013, p. 5). As Beetham (pp. 13–14) argues, this leads to a situation where it is not the prevailing societal norms that count, but rather where universal norms are developed without taking the context of a given society into account. And this context is precisely what makes the topic of legitimacy interesting to a social scientist.

Choosing certain normative yardsticks is not detached from the social context in which a researcher operates. Similarly, empirical approaches also reserve a role for norms. Reid (2020, p. 92) points to the conflation that often occurs between the two forms of legitimacy as they tend to be related. While the empirical tradition aims for a value-free concept of legitimacy, it is far from that, as Kocken (2008) points out. In the field of international relations, the (sometimes implicit) norm is that international collaboration and protection of the international system are seen as intrinsically valuable (Hurd, 2019, p. 727). In addition, while employing an empirical approach, Tallberg and Zürn (2019, p. 587) recognize, for example, that norms produced in society inform the beliefs of actors.

Because of the relationship between the two approaches to legitimacy, concentrating on both or on one but at the same time referring to the other, is common. It is, for example, employed by Reid (2020) and Dietz et al. (2019). Reid uses Bodansky's distinction between normative and descriptive legitimacy to assess the legitimacy of the WTO and EU in the area of trade and environment. Dietz et al., in their study about the investor-state arbitration of the EU, refer to Beetham's three criteria. One could argue that Beetham's (2013) approach to legitimacy is an example of a sociological approach that integrates norms explicitly. Legitimacy in this approach concerns "beliefs held by those who are subject to and/or participate in a given political institution" (Agné, 2018, p. 20). In his plea for a social-scientific approach to legitimacy that moves away from the Weberian concept, Beetham (2013, pp. 16–17) emphasizes three criteria for power to be considered legitimate. Criterion 1: "It conforms to established rules" (Beetham, 2013, p. 16), meaning that the actions an organization undertakes should be in line with the established legal framework. When it is not, something should be considered illegitimate. Criterion 2: "The rules can be justified by reference to beliefs shared by both dominant and subordinate" (Beetham, 2013, p. 16). This mix helps to move away from the danger that the beliefs expressed are only a reflection of those of the powerful, and at the same time, it understands that beliefs are rooted within a "given society" and cannot be considered universal without taking into account time and place, as philosophers tend to think: "For the moral and political philosopher, power is legitimate where the rules governing it are justifiable according to rationally defensible normative principles" (Beetham, 2013, p. 5). Shared beliefs need to be found in perceiving the power holders as "a valid source of authority," the "qualities" of those in power, and in serving the "general interest" (Beetham, 2013, p. 17). Finally, criterion 3 states that "there is evidence of consent by the subordinate to the particular power relation" (Beetham, 2013, p. 16). Such consent confers legitimacy to the powerful in the form of, for example, mass mobilization or taking part in consultations (Beetham, 2013, pp. 93–94). This is an important criterion as it is a demonstration of commitment (for whatever reason) of those participating in a power relationship—something that is important for the relationship itself, while at the same time giving a signal to those who are not part of this specific relationship. As Beetham (2013, p. 12) says, actions "*confer* legitimacy." That this approach can help to assess legitimacy on an international level, taking into account the particularities of the role of states and their relationship, is further explored in the article by de Deugd and van Roozendaal (2022).

As Zaum (2017, pp. 1110–1111) maintains, shared beliefs that lead to legitimation can come about in three functional forms. It concerns beliefs about what *output* should look like and whether this is attained effectively by an arrangement. Here, the notion that deserves special attention is that of the performance of an arrangement. Or, as Tallberg and Zürn (2019, pp. 592–593) put it, does it deliver in terms of, for example, effectiveness? And does it contribute to the creation and distribution of welfare? Secondly, it refers to the *process* by which power holders are selected, how decisions are formulated and agreed upon, and how participation is being shaped. Tallberg and Zürn (2019, pp. 591–593) also refer to democratic performance, meaning the decisions made in terms of, for example, democratic quality. The third form referred to by Zaum (2017, p. 1111) concerns structural legitimacy. This is a more abstract notion about whether the arrangement or organization is seen (by those it serves and the wider audience [including non-member states and non-governmental organizations]) as the organization best designed to deal with a given set of issues. More than procedural legitimacy, it has an essential nature in the sense that an arrangement's "general organizational features" allows for legitimacy (Suchman, 1995, p. 581). There are different ways in which shared beliefs can be established. Dietz et al. (2019), for example, establish shared beliefs by reviewing the normative issues that are contested and addressed in the public debates. However, for Beetham (2013, Chapter 3), shared beliefs should be established by looking at sources and content of such beliefs such as tradition or "the people." Additionally, expressed consent can be found in, for example, public debates.

For Beetham (2013), the legitimation of power is very different when comparing the national and the international level. First of all, power overlaps with legitimacy at the international level, as there are hardly any other means by which power can be exercised. In addition, subject and audience conflates at the international level, where states design the frameworks to which they are also audiences. However, with the increased prominence of non-governmental organizations (NGOs), audiences have broadened over time. Thirdly, when taking into account the three conditions specifically, international organizations need to act in accordance with the international legal structure, their actions should address common goals and take into account procedures established, and states need to comply with the rules, or at least they should not act against them. However, in an international environment, rules have more than one interpretation, and the underlying norms suffer from a conflict between the need to cooperate and the need to secure sovereignty; they also suffer from unfair procedures, with some states being more powerful than others, and citizens being under-represented (other than through the representation by states). Also, compliance on the international level means legitimacy (but non-compliance may not matter that much in the absence of coercive power of international arrangements; Beetham, 2013, pp. 269–274).

5. How a Loss of Legitimacy Can Be Addressed by International Arrangements

As Lenz and Viola argue, there appears to be an implicit assumption in much of the organizational legitimacy literature that "incongruence between societal values and an organization's procedures, purpose, and performance will lead to a loss of legitimacy and, consequently, to pressures for institutional change" (2017, p. 941). According to what Lenz and Viola call the "congruence model" and in line with the views espoused by Beetham on the matter, organizations should be sensitive to a (perceived) loss of legitimacy. After all, such a loss of legitimacy might well lead to reduction in support for the organization concerned. This holds true, especially in cases where organizations lack the power that comes with coercive measures or cases where organizations are functioning sub-optimally. In order to regain support, legitimacy can be reestablished through reform so that incongruence will transform into congruence (Lenz & Viola, 2017, p. 943).

To the congruence model with its roots in institutionalist scholarship, Lenz and Viola add the element of perception, which they take from cognitive psychology literature (2017, p. 941). The question of how legitimacy is perceived is crucial to understanding how congruence/incongruence is assessed and to what extent the need for organizational reform is felt (Lenz & Viola, 2017, p. 947). As Lenz and Viola maintain, judgments regarding legitimacy can be "sticky" (2017, p. 952)—implying that change is not always or not necessarily forthcoming. For example, this can be the case for well-established institutions: The older an organization is, the more likely it is to be perceived as legitimate—and the less likely it is to undergo institutional change to try and increase congruence (Lenz & Viola, 2017, pp. 955–956).

In those cases where the legitimacy of an organization is under threat, and this non-legitimacy is indeed assessed as such by the recipients, then the resultant process of institutional reform is beset with its own peculiarities, as is shown in this thematic issue's articles by Pircher (2022), Verbeek (2022), and Langford and Fransen (2022). Resultant processes of reform may not necessarily improve an institution but rather support compliance to a set of external demands (Zaum, 2017, p. 1124). In a process of what Campbell (2004, p. 43) has defined as symbolic change and what Dietz et al. (2019, p. 754) call symbolic closure, arrangements may well engage in reforms that fall in the category of "form over function" (Zaum, 2017, p. 1125).

Still, this does not exclude the possibility that this method of preserving or enhancing legitimacy will lead to more substantive changes in the long run (Campbell, 2004, p. 43), even though that may not be their primary purpose.

6. A Thematic Issue of *Politics and Governance*

The debate about the legitimacy of international arrangements is inviting both state and non-state actors alike to develop new responses, or stimulating them to return to old ones. The thematic issue of *Politics and Governance* focuses on the analysis of how—from a social science perspective—legitimacy questions affect international economic and financial arrangements and if, and how, such legitimacy questions lead to institutional change. It builds upon the ideas about the legitimacy crisis that many international arrangements face, explores sociological approaches to study legitimacy, and applies these to several empirical cases. Such exploration is relevant, as pointed out by Tallberg and Zürn (2019, p. 582), who argue that the way international organizations create and sustain legitimacy is still underdeveloped.

In this thematic issue, attention is paid first to the question of how legitimacy is shaped. From a sociological perspective, Linsi (2022) addresses not just the role of material factors but also the role of ideational factors as drivers of the major shift away from the restriction and regulation toward the promotion and attraction of inward foreign direct investments that occurred in the 1990s. Arguably, economic narratives can play an important role in determining what individuals perceive as legitimate. In turn, this element of legitimacy influences what individuals believe to be in their best interest. By thus taking into account both material and ideational elements in the study of legitimacy, the author argues for theoretically more comprehensive approaches to understanding institutional changes in international political economy.

Focusing on the ongoing legitimacy crisis in the global investment treaty regime and the system of investor-to-state dispute settlement (ISDS), Verbeek (2022) analyses why—even in the face of significant contestation—the EU has not moved away from the ISDS system. As the author showcases, several factors are at play here, including the belief on the part of the European Commission that the lack of legitimacy of the ISDS system is caused by its procedural features rather than by more fundamental issues regarding its social purpose. With the EU still firmly set on its neoliberal path, attempts to remedy the underlying causes of the legitimacy gap are a non-starter.

de Deugd and van Roozendaal (2022) move the discussion to the link between legitimacy and compliance. They address the various agreements that have been concluded between the EU and Ukraine and focus on the role of labour standards therein. While these agreements contain the commitment to enhance (the protection of) core labour standards and express and adhere to shared beliefs, progress in this area has been slow, demonstrating a lack of compliance. As the authors show, this lack of compliance with the terms of the treaties may well be connected to the fact that commitment to the improvement of labour standards is regarded—by some audiences at least—as merely symbolic. All this might change now that Ukraine has requested accession to the EU.

Decreasing public and political support may lead to more than symbolic policy changes, as shown by the article of Pircher (2022). In response to the Covid crisis, the EU was forced to make swift decisions on procurement, resulting in less involvement of different parties and thereby creating a legitimacy deficit in the implementation phase. As Pircher shows, this, in turn, is expected to affect the legitimacy of the EU procurement policies in a sociological sense, as it allows for more diversity in implementation on national levels, which consequently may lead to corruption.

International organizations might contradict their own legitimacy claims in their policy formulations, as discussed in the next contribution. Metinsoy (2022) suggests that the IMF builds its legitimacy claims on being a "technocratic" organization that is "above" (geopolitical) concerns and designs policies solely in accordance with "macro-economic indicators" in a country. In her article, Metinsoy provides evidence that US-allied left-wing governments receive both a higher number and stricter labour conditions than non-allied and right-wing and centrist governments, irrespective of their prior labour institutions. This is problematic at several levels in addition to being contradictory to original legitimacy claims. First of all, in terms of output legitimacy, increased inequality and decreased protection of workers' rights compromises the broad support for IMF policies. Secondly, from a procedural legitimacy perspective, the formulation of policies based on the informal influence of a powerful state contradicts the "transparent" and macroeconomic-based policy formulation claims. Finally, from a normative perspective, because these governments were probably elected on a different platform, policy prescriptions of the IMF that run counter to the demands of their constituencies are hard to justify.

Finally, the emergence of new initiatives in the face of a crisis of legitimacy of older arrangements is dealt with by Langford and Fransen (2022). Following the delegitimation of Northern-oriented transnational economic governance, new initiatives—backed by Southern actors—have emerged. As the authors argue, based on an India-based transnational governance initiative focused on labour and environmental regulation of tea production, the emergence of such new initiatives in an era of polycentric trade requires a careful balancing act between the preferences, perspectives, and beliefs of different actors from different geographies in order to attain legitimacy.

All in all, through the exploration of questions surrounding the sociological legitimacy of international arrangements and the consequences for institutional change, the different ways in which international arrangements can maintain legitimacy or have their legitimacy threatened, the various approaches to (re)building legitimacy, and the effects of a lack of legitimacy on the role and function of institutions are highlighted.

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Conflict of Interests

The authors declare no conflict of interest.

References

Agné, H. (2018). How normative or sociological should it be? In J. Tallberg, K. Bäckstrand, & J. A. Scholte (Eds.), *Legitimacy in global governance: Sources, processes, and consequences* (pp. 20–34). Oxford University Press. https://doi.org/10.1093/oso/9780198826873.003.0002

Bäckstrand, K., & Söderbaum, F. (2018). Legitimation and delegitimation in global governance. Discursive, institutional, and behavioral practices. In J. Tallberg, K. Bäckstrand, & J. A. Scholte (Eds.), *Legitimacy in global governance: Sources, processes, and consequences* (pp. 101–118). Oxford University Press. https://doi.org/10.1093/oso/9780198826873.003.0006

Beetham, D. (1998). Legitimacy. In *The Routledge encyclopedia of philosophy*. https://doi.org/10.4324/9780415249126-S034-1

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

Bexell, M., & Jönsson, K. (2018). Audiences of (de)legitimation in global governance. In J. Tallberg, K. Bäckstrand, & J. A. Scholte (Eds.), *Legitimacy in global governance: Sources, processes, and consequences* (pp. 119–133). Oxford University Press. https://doi.org/10.1093/oso/9780198826873.003.0007

Buchanan, A., & Keohane, R. O. (2006). The legitimacy of global governance institutions. *Ethics & International Affairs*, *20*(4), 405–437. https://doi.org/10.1111/j.1747-7093.2006.00043.x

Campbell, J. L. (2004). *Institutional change and globalization*. Princeton University Press.

Campbell-Verduyn, M., Linsi, L., Metinsoy, S., van Roozendaal, G., Egger, C., Fuller, G., & Voelkner, N. (2019). *The Covid-19 pandemic: Continuity and change in the international political economy* (Globalisation Studies Groningen report). University of Groningen. https://www.rug.nl/research/globalisation-studies-groningen/publications/researchreports/reports/gsg-report26062020web.pdf

de Deugd, N., & van Roozendaal, G. (2022). Hiding in plain sight: The legitimacy of labour standards clauses in the EU–Ukraine collaboration. *Politics and Governance*, *10*(3), 121–130.

Debre, M., & Dijkstra, H. (2020). *Trump's "America First" approach has targeted international institutions—but they have proved to be resilient*. The Loop.

https://theloop.ecpr.eu/trumps-america-first-approach-has-targeted-international-institutions-but-they-have-proved-to-be-resilient

Diependaele, L., De Ville, F., & Sterckx, S. (2019). Assessing the normative legitimacy of investment arbitration: The EU's investment court system. *New Political Economy*, *24*(1), 37–61. https://rug.on.worldcat.org/oclc/8107262576

Dietz, T., Dotzauer, M., & Cohen, E. S. (2019). The legitimacy crisis of investor-state arbitration and the new EU investment court system. *Review of International Political Economy*, *26*(4), 749–772. https://doi.org/10.1080/09692290.2019.1620308

Dingwerth, K., Schmidtke, H., & Weise, T. (2020). The rise of democratic legitimation: Why international organizations speak the language of democracy. *European Journal of International Relations*, *26*(3), 714–741. https://doi.org/10.1177/1354066119882488

Elsig, M. (2007). The World Trade Organization's legitimacy crisis: What does the beast look like? *Journal of World Trade*, *41*(1), 75–98. https://doi.org/10.7892/boris.49426

Hooghe, L., Lenz, T., & Marks, G. (2019). Contested world order: The delegitimation of international governance. *The Review of International Organizations*, *14*(4), 731–743. https://doi.org/10.1007/s11558-018-9334-3

Howse, R., & Nicolaidis, K. (2003). Enhancing WTO legitimacy: Constitutionalization or global subsidiarity? *Governance*, *16*(1), 73–94. https://doi.org/10.1111/1468-0491.00205

Hurd, I. (2019). Legitimacy and contestation in global governance: Revisiting the folk theory of international institutions. *The Review of International Organizations*, *14*(4), 717–729. https://doi.org/10.1007/s11558-018-9338-z

Jenkins, B., & Jones, B. (2020). The WHO, international institutions, and the Covid-19 response. In J. R. Allen & D. M. West (Eds.), *Reopening the world. How to save lives and livelihoods* (pp. 21–25). The Brookings Institution. https://www.brookings.edu/wp-content/uploads/2020/06/Brookings-Reopening-the-World-FINAL.pdf

Kocken, J. (2008). Questioning legitimacy or why social scientists find legitimacy where none exists. *Recht der Werkelijkheid*, *29*(3), 7–18.

Langford, N. J., & Fransen, L. (2022). Building legitimacy in an era of polycentric trade: The case of transnational sustainability governance. *Politics and Governance*, *10*(3), 155–166.

Lenz, T., & Viola, L. A. (2017). Legitimacy and institutional change in international organizations: A cognitive approach. *Review of International Studies*, *43*(5), 939–961. https://doi.org/10.1017/S0260210517000201

Linsi, L. (2022). Economics narratives and the legitimacy of foreign direct investments. *Politics and Governance*, *10*(3), 98–109.

Metinsoy, S. (2022). "Selective friendship at the fund": United States allies, labor conditions, and the International Monetary Fund's legitimacy. *Politics and Governance*, *10*(3), 143–154.

Pircher, B. (2022). EU public procurement policy during Covid-19: A turning point for legitimate EU governance? *Politics and Governance*, *10*(3), 131–142.

Reid, E. (2020). Trade and environment in the EU and WTO: Legitimacy, proportionality and institutional power play. In R. Krämer-Hoppe (Ed.), *Positive integration—EU and WTO approaches towards the "trade and" debate* (pp. 87–119). Springer. https://doi.org/10.1007/978-3-030-25662-3_5

Scherz, A. (2019). Tying legitimacy to political power: Graded legitimacy standards for international institutions. *European Journal of Political Theory*, *20*(4), 631–653. https://doi.org/10.1177/1474885119838137

Suchman, M. C. (1995). Managing legitimacy: Strategic and institutional approaches. *The Academy of Management Review*, *20*(3), 571–610. https://doi.org/10.2307/258788

Tallberg, J., & Zürn, M. (2019). The legitimacy and legitimation of international organizations: Introduction and framework. *The Review of International Organizations*, *14*(4), 581–606. https://doi.org/10.1007/s11558-018-9330-7

Theuns, T. (2019). The legitimacy of free trade agreements as tools of EU democracy promotion. *Cambridge Review of International Affairs*, *32*(1), 3–21. https://doi.org/10.1080/09557571.2018.1552247

Verbeek, B.-J. (2022). Embedded neoliberalism and the legitimacy of the post-Lisbon European Union investment policy. *Politics and Governance*, *10*(3), 110–120.

Zaum, D. (2017). Legitimacy. In J. K. Cogan, I. Hurd, & I. Johnstone (Eds.), *The Oxford handbook of international organizations* (pp. 1107–1125). Oxford University Press. https://doi.org/10.1093/law/9780199672202.003.0052

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Article

Economic Narratives and the Legitimacy of Foreign Direct Investments

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Abstract

In the 1990s, the primary focus of the international investment regime shifted from the restriction and regulation towards the promotion and attraction of foreign companies. Dominant accounts in the international political economy literature emphasize the role of interests and institutions in explaining this policy shift but pay little attention to their legitimation. This article argues that transformations in dominant economic discourses—and in particular the rise of the competitiveness narrative—played an important role in granting legitimacy to this U-turn in international economic affairs. To test the argument, the article focuses on the impact of the differential changes in the portrayal of greenfield and mergers and acquisitions (M&A) inward foreign direct investments (IFDI) in economic discourses in the UK before and after the rise of the competitiveness narrative. In line with the theoretical argument, findings indicate that individuals who passed their early adulthood in a period in which the narrative of economic statism was still prevalent hold notably more skeptical views of M&A IFDI even though they are otherwise not more opposed to investments from abroad. A causal mediation analysis lends further empirical support to the argument.

Keywords

economic discourses; foreign direct investments; globalization; legitimacy; narratives; public opinion; socialization

Issue

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1. Introduction

Policies shaping the structure of the international investment regime have shifted considerably over the past decades. Restrictions on foreign direct investments (e.g., screening mechanisms, equity restrictions, and other conditionalities imposed on inward investments) were commonplace in the decades following World War II, in the Global South as well as in advanced industrial economies. By the late 20th century, the regulatory approach had been overturned, as the global policy regime's primary purpose had moved from *restricting* and *regulating* investments by foreign companies to actively *promoting* and *attracting* them (Danzman & Slaski, 2021; Elkins et al., 2006; Jandhyala et al., 2011; Jensen et al., 2014; Linsi, 2016; Poulsen, 2015; Wellhausen, 2021). Existing literature in international political economy explains this shift by transformations such as the empowerment of labor classes through global democratization (Pandya, 2014; Pinto, 2013), demands by local businesses in response to banking reforms (Danzman, 2019), or policy diffusion (Elkins et al., 2006). While these factors undoubtedly did play a role in the global opening up of the international investment regime in the 1990s and 2000s, they tend to downplay the role of contemporaneous discursive and normative developments. Institutional changes are socially and normatively embedded, as the literature on legitimacy has shown for a broad variety of policy issues and organizations (Beetham, 1991; Burgoon & Fransen, 2017; Dingwerth et al., 2019; Seabrooke, 2006; Tallberg & Zürn, 2019). The politically powerful cannot adapt rules as they please. Institutional changes such as those observed in the international investment regime require justification by reference to beliefs shared by dominant and subordinate groups alike (Beetham, 1991;

de Deugd & van Roozendaal, 2022). Economic ideas and discourses mobilized by ruling classes can play an important role in this context in legitimizing institutional changes (Carstensen & Schmidt, 2016).

The thrust of the argument pursued in this article is that the implementation of pro-liberalizing reforms in the international investment regime was accompanied and made possible by shifts in economic narratives that recast widely held beliefs about the *desirability* of inward foreign direct investment (IFDI). Building on previous work on the role of ideas and imaginaries in political economy (e.g., Abdelal et al., 2010; Cameron & Palan, 2004; De Ville & Siles-Brügge, 2018; Schmidt, 2001; Shiller, 2019; Stanley, 2014; Sum & Jessop, 2013), the article suggests that economic narratives circulated in public discourses can play an important role in the construction of individual preferences towards economic globalization. As previous literature has suggested (e.g., Blyth, 2002; Chwieroth, 2007; Linsi, 2020; Metinsoy, 2021), economic narratives are oftentimes rooted in academic work but get disseminated by think tanks, international organizations, politicians, and the news media who simplify and popularize certain theoretical concepts and ideas among a wider public. Narratives provide readily available scripts and causal expectations that can function as cognitive shortcuts, but also respond to (and make sense of) individuals' economic hopes and anxieties. By doing so, they can influence how the public "sees" the material consequences of economic integration for themselves and the in-groups they care about and, as a result, how they define their stance towards economic globalization and the legitimacy of certain policy decisions (Carstensen & Schmidt, 2016; Chwieroth & Sinclair, 2013; Fuller, 2021).

To test this argument empirically, the article examines mass attitudes towards IFDI in the UK. Two considerations make it a suitable case for that purpose: First, as will be shown, in the late 1980s and early 1990s the framing of the costs and benefits of IFDI in British public economic discourses changed sharply in a matter of a few years (developments that were mirrored in many other countries subsequently). Second, the phenomenon of IFDI consists of two distinct types of transactions, greenfield and mergers and acquisitions (M&A) IFDI, which have similar material consequences according to economic research but were portrayed very differently in public economic discourses. In short, while greenfield IFDI was perceived favorably throughout the period, in the 1950s–1980s, political groups from left and right repeatedly rang alarm bells about foreign takeovers of British firms (M&A IFDI), which were described as a threat risking to undermine the nation's long-term development prospects. From the early 1990s onwards, when a narrative of globalization and competitiveness took a hold of British public economic discourses (Watson & Hay, 2004), debates started to change. Rather than as a problem, foreign takeovers were increasingly framed as an inevitable and on the whole economically beneficial phenomenon, which some even started to interpret as an indicator of the success of the UK economy (Linsi, 2020).

To evaluate whether and to what extent this change in discourse affected mass attitudes towards IFDI, I leverage a well-established finding from previous research on socialization, which has found the likelihood of individuals to absorb and internalize political-economic information and value judgments to be greatest during late adolescence and early adulthood and rapidly decreasing thereafter (Grasso et al., 2017; Inglehart, 1989; Mannheim, 1970). Accordingly, I hypothesize that individuals who passed their prime period of political-economic socialization at a time in which the discourse of economic statism was prevalent will express more skeptical views of M&A IFDI than their peers who came of age at a time in which the economic narrative of globalization was prominent, independently from their material position in economic structures and the broader cultural and political-ideological beliefs that they hold.

Using the results of one of the most fine-grained surveys of IFDI attitudes conducted to date and taking other age-related factors that can potentially influence IFDI attitudes into account, I find strong empirical support for this hypothesis. While earlier studies and public commentary have also observed higher levels of globalization skepticism among older respondents, this article forwards a novel and more specific explanation which emphasizes the social contingency of such patterns. Consistent with the hypothesis of socialization and contrary to notions of a "natural" age-dependent trend towards conservatism, I find older cohorts in the UK to be more skeptical only of M&A and not of investments from abroad in general. Furthermore, while other unobserved age-related dynamics may simultaneously be at play, I am able to establish through a causal mediation analysis (CMA) that about half of the sizable cohort effect can be explained by differences in the degree to which individuals of each cohort (dis)agree with the ideology of economic statism (which is measured separately in the survey).

As a whole, the article encourages scholars studying economic attitudes and preferences to pay closer attention to how individual interests are being constructed, and the role that narratives and other interpretive frameworks can play in legitimating changes in the rules that govern the global economy. As the findings show, taking legitimacy seriously can lead to a more complete account of the remarkable transformation in the international investment policy regime over the past decades. At the same time, it promises to help us better understand the return of investment restrictions in most recent years (Babić & Dixon, 2022; Danzman & Meunier, 2021; Gertz, 2021; Linsi, 2021), which has gone hand in hand with an anti-globalist movement in which discursive strategies tapping into themes of earlier economic statist narratives have played a prominent role. The remainder of the article is organized as follows: The argument is briefly situated in the literature, followed by an elaboration of the empirical strategy and the presentation of key findings. The last section concludes.

2. The Formation of Individual Preferences Towards Economic Globalization and Inward Foreign Direct Investments

Early studies of mass attitudes towards economic globalization have primarily focused on individuals' positioning within economic structures. Building on variants of Heckscher and Ohlin's factor-endowment theory, they uncovered evidence that individuals who possess the necessary skill set to take advantage of the opportunities that further economic integration can bring about are more likely to support the liberalization of regimes regulating cross-border flows of trade, capital, and migration, while those at risk to incur a net income loss from greater factor mobility are opposed to it (Mayda & Rodrik, 2005; Scheve & Slaughter, 2001). The few existing studies of IFDI attitudes closely mirror these arguments and emphasize the association of higher (lower) levels of skills, income, or education with more (less) favorable views of foreign companies (Pandya, 2010; Scheve & Slaughter, 2004). While these arguments can provide convincing explanations of variation in attitudes across social groups, they face some limitations in making sense of shifts in attitudes over time.

Furthermore, individuals' self-interests in the world economy are not self-evident (Abdelal et al., 2010; Rho & Tomz, 2017). Whether or not the attraction of foreign companies is in one's personal interest can be very difficult to tell. The material reality of the world economic system as such is too vast and complex to be readily "seen." Arguably people's knowledge and opinions about economic policies are therefore not primarily based on observations of the economy itself but rather on economic *imaginaries* that depict the latter in certain ways (Cameron & Palan, 2004; Campbell-Verduyn, 2021; Fuller, 2021; Lobo-Guerrero et al., 2019; Sum & Jessop, 2013).

In this perspective, economic narratives become important objects of analysis because they are what shapes shared imaginaries about the economy: They provide deliberately simplifying accounts of socio-economic macro-structures surrounding us in order to allow us to make (some) sense of our position and activity within highly complex systems (Krebs, 2015). As such, they are a relational concept that mediates structure and agency, enabling individuals to "(re)construct visions of the world that allow them to (re)situate themselves in the world" (Schmidt, 2008, p. 306). Or as Krebs (2015, p. 16) has formulated it: "It is through narrative that human beings order disordered experience and impart meaning to themselves and their world."

In other words, economic narratives are socially constructed and intersubjectively shared stories that provide plausible and commonsensical accounts of how the economy works, which can serve as useful cognitive frames in helping individuals to make sense of their surroundings. But economic narratives are not neutral reflections of reality; by necessity, they emphasize certain aspects of economic phenomena at the expense of others. What they emphasize and what they downplay, in turn, can shape how individuals perceive economic realities, what they consider as "problems" and "solutions'' and how they define their interests (Narlikar, 2020; Schmidt, 2001; Stanley & Jackson, 2016). By the same token, at the societal level, changes in narratives over time have the potential to shift the positioning of average opinion over time.

Against this background, the remainder of this article evaluates the impact of over-time shifts in dominant economic narratives on mass attitudes towards inward investments from multinational corporations.

3. Empirical Strategy

To evaluate the impact of shifts in economic narratives on individual preferences, the research design focuses on an empirical case in which the description of an economic phenomenon in dominant discourses has shifted abruptly at a roughly identifiable point in time, and leverages insights from socialization research to identify heterogeneities in the extent to which this discursive change is expected to affect the economic belief systems of different social groups. The following paragraph briefly synthesizes the discursive shift in the portrayal of IFDI in the UK; the subsequent section introduces the age-dependency of socialization processes.

3.1. A Blessing or a Curse? Inward Foreign Direct Investments in Public Economic Discourses in the UK

Economic discourses in the aftermath of World War II were dominated by narratives of economic statism, in the UK and elsewhere (Linsi, 2016). The world economy was described as a system consisting of a set of partly autonomous national economic units exchanging (relatively modest amounts of) goods and capital with each other. The principal drivers of economic growth and development were perceived to be located at the national level. National firms were portrayed as all-important actors determining a nation's economic success or failure in the long run. In line with this reasoning, foreign acquisitions of domestic firms were mostly seen as economic problems. From the 1950s well into the 1980s, governments from both the Conservative and the Labour Party emphasized the economic importance of national industry, actively devised various programs to strengthen nationally owned companies, and warned about the dangers of foreign takeovers of domestic firms (Hall, 1986; Linsi, 2020).

Yet, the discourse of economic statism in Britain was not just opposed to international economic integration *per se* or the presence of foreign economic actors in general. The worries focused to a large extent on the phenomenon of M&A IFDI, which had been singled out as the most problematic aspect of economic internationalization. There was comparatively little discursive opposition to free trade in British economic discourses at the time, which was portrayed in much more favorable terms. Also, greenfield IFDI—that is, the FDI that does not involve the direct takeover of domestic companies—were considered in a much more positive light. Developing an implicit theory of "good" (greenfield) and "bad" (M&A) IFDI, Prime Minister Harold Wilson, for instance, suggested:

> [We must] distinguish between those forms of foreign investment which are and have always been welcomed, which…lead to the creation of new industries or new factories…for our people on the one hand, and, on the other, those which involve a partial or complete take-over of existing British firms which are already very well run. (Hodges, 1974, p. 175)

Survey evidence from British policy elites, collected independently by Fayerweather (1972) and Hodges (1974) in the late 1960s and early 1970s, strongly mirrors such views: While greenfield IFDI were primarily seen as a source of technology and valuable addition to the country's distressed balance of payments, M&A IFDI were widely considered to be a problem.

The rise of Thatcherism somewhat softened the opposition to M&As, but it was only in the early 1990s that those concerns began to dissipate visibly when a new discourse of globalization and national competitiveness started to gain a hold of public economic debates (Schmidt, 2001; Watson & Hay, 2004). Drawing from the highly influential work by Porter (1998) and others, the narrative was first promoted in Britain by the Conservative Party and then enthusiastically embraced by the "New" Labour Party under the leadership of Tony Blair and Gordon Brown. The competitiveness narrative suggested that, in a globalizing economy, the nationality of companies was increasingly irrelevant. In this view, the long-term success of a national economy depends not so much on the strength of nationally owned industries, but primarily on a country's ability to attract the economic activities of globally mobile companies of any (or no) nationality (Fougner, 2006; Jaakkola et al., 2022; Linsi, 2020; Puehringer et al., 2021). This change in thinking prepared the ground for a broader reorientation of British industrial strategy that gradually shifted from the strengthening of domestic industry across the country towards fomenting the development of an international financial industry hub around the City of London (Augar, 2000). Accompanying this change in strategy, takeovers and foreign ownership of domestic companies came to be described as normal parts of economic life—or even symbols of economic strength demonstrating the UK's success in attracting globally mobile companies—rather than a problem. As a result, despite unprecedented increases in M&A IFDI in the UK in the 1990s and 2000s, the phenomenon of foreign takeovers lost political salience. As indicated in Figure 1, which reproduces the findings of an analysis of parliamentary speeches presented in Callaghan (2015), political debates about M&A IFDI almost entirely disappeared from parliamentary discussions in the 1990s, with the word "takeover" barely even being mentioned any longer. In short, inward FDI had become a political non-issue.

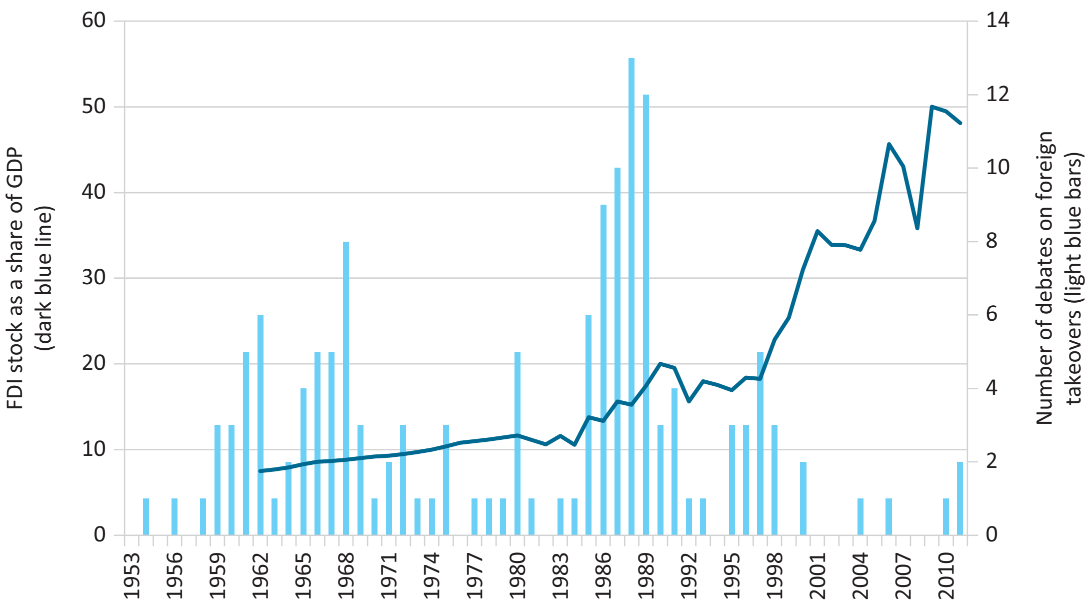

Figure 1. The number of debates on takeovers in the UK Parliament and the UK FDI stock over time. Note: Dark grey bars indicate the number of debates in the House of Commons and House of Lords that contained the term "takeover" or "take-over'' at least five times. Sources: Number of debates from Callaghan (2015); FDI stock data from UNCTAD (2022).

3.2. Age-Dependent Processes of Economic Socialization

As empirical research on socialization has shown, social attitudes are primarily shaped during adolescence and become less likely to change fundamentally after early adulthood. This pattern has been observed in a variety of issue areas, such as partisan attachment and political ideologies (Dinas, 2014; Grasso et al., 2017), religious beliefs (Sherkat, 1998), or redistribution preferences (Giuliano & Spilimbergo, 2014).

Krosnick and Alwin (1989) ascribe this dynamic to a combination of three mechanisms: a neurobiologically driven process of cognitive transformations that makes the absorption of new information more difficult for older people; individuals' reliance on previous experiences as anchors that create psychological stability, which naturally decreases the proportional impact of new information as the total number of previous experiences grows; and the tendency of individuals to center their social networks around peers from the same age group, which reduces individuals' exposure to different norms and beliefs popular among other cohorts.

3.3. Predictions

Applied to the case of changing narratives about M&A IFDI, this suggests the predictions summarized in Table 1. Individuals who passed their late adolescence and early adulthood in a time period in which the statist economic discourse was prominent are likely to view M&A IFDI more skeptically than younger peers who grew up in a context in which the globalization narrative shaped public economic debates; at the same time, no such difference is to be expected for the case of greenfield IFDI where no similar change in framing has occurred.

4. Empirical Analyses

To evaluate these propositions, the study leverages an original in-depth survey of public attitudes towards IFDI with a sample of 700 respondents from the UK conducted through Survey Sampling International in October 2016. The questionnaire included a variety of questions eliciting respondents' views of different types of IFDI and the perceived positive and negative aspects thereof. More details about the questionnaire are provided in the Supplementary File accompanying this article.

Most importantly, the survey aims to distinguish between mass attitudes towards the two main types of FDI: greenfield and M&A. Respondents were asked separately about their opinion about the "presence of foreign companies" in the UK economy in general, their view of foreign companies "building new companies" (greenfield IFDI) and their attitudes towards foreign companies "buying existing companies" (M&A IFDI). The distribution of responses is shown in Figure 2.

Table 1. Stylistic overview of predicted outcomes.

		Relative skepticism towards…	
		Greenfield IFDI	M&A IFDI
Time period of prime socialization	1990s–2000s	Low	Low
	1960s–1980s	Low	High

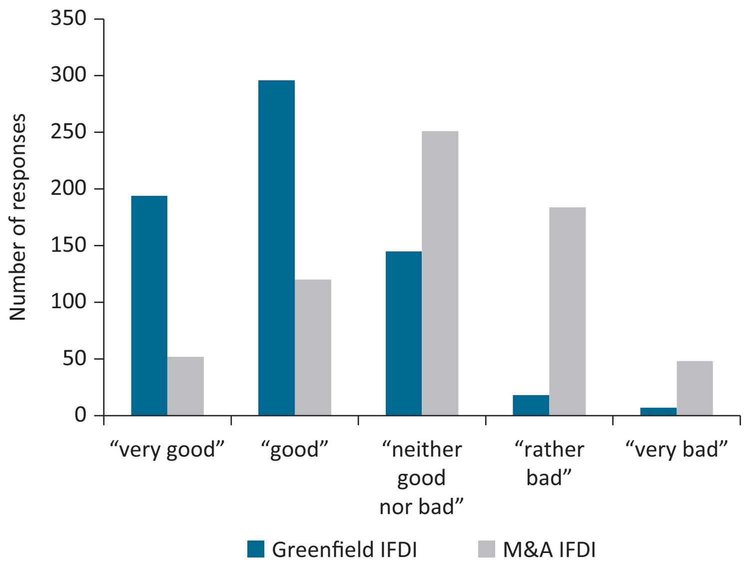

Figure 2. Attitudes towards greenfield and M&A FDI.

4.1. Greenfield vs. M&A IFDI

To evaluate the role of economic socialization, survey respondents are classified into various birth cohorts according to the historical time period in which they passed their prime period of socialization. Following previous studies, the prime period of socialization is defined as the age span between roughly 15 and 30 years. Assuming that the shift away from the narrative of economic statism occurred in the early 1990s, respondents are divided into three groups: individuals born after 1975 (who turned 15 after 1990 and were thus presumably not strongly exposed to the narrative of economic statism during their formative years), individuals born between 1960 and 1975 (who were likely exposed to both narratives), and individuals born before 1960 (who had turned 30 before 1990 and were presumably only exposed to the economic statism narrative during their prime period of economic socialization).

The main concern for identification is that the three specified cohorts may differ in their views of M&A IFDI for other reasons than economic socialization, such as differences in their labor market status or the strength of broader cultural (rather than strictly economic) nationalist sentiments. These concerns are taken into account in three ways: First, the inclusion of a battery of control variables proxying for individuals' labor market status and cultural and political-ideological beliefs. Second, the simultaneous comparison of greenfield and M&A IFDI attitudes (with the socialization hypothesis predicting a difference in cohort attitudes only for M&A but not greenfield IFDI, while distributional or cultural considerations should in principle be similarly relevant for both types of IFDI). Third, I perform a CMA in order to estimate the part of the cohort differences that is systematically related to differences in economic beliefs.

4.1.1. Empirical Model and Main Results

Respondents' views of greenfield and M&A IFDI, as illustrated in Figure 2 above, are the two dependent variables. Given the nature of the dependent variables, the models are specified as ordered probit models.

The main independent variable is the categorical variable dividing respondents into the three socialization cohorts. To take theoretical arguments related to the distributive consequences of IFDI into account, information about respondents' level of education, household income, the skill intensity of their current job, as well as a dummy variable indicating whether they are employed by a foreign multinational corporation is included. To account for alternative cultural or ideological drivers of IFDI attitudes, information about respondents' national identity ("British" vs. "English," "Scottish" or "Welsh"), partisan preferences, their stance on Brexit, and the salience of nationalist views unrelated to economic issues are also included. Furthermore, a dummy variable controls for respondents' gender.

The regression results are presented in Table 2. Models 1 and 2 assess the determinants of public skepticism towards greenfield and models 3 and 4 attitudes towards M&A IFDI. Models 1 and 3 include only those control variables, which are unlikely to be directly affected by the outcome variable; models 2 and 4 are the full set of controls. In line with the expectation that those more likely to benefit from economic globalization hold more favorable views of inward FDI, higher levels of household income and skills are associated negatively with individuals' skepticism towards greenfield as well as M&A IFDI. Interestingly for our purposes, respondents with higher levels of education tend to have slightly more favorable views of greenfield IFDI, but more negative views of M&A IFDI. The female gender dummy is associated with less favorable views of greenfield as well as M&A IFDI, with the relationship being stronger for the former than the latter. The inclusion of alternative variables proxying to cultural and ideological beliefs substantively improves model fit: More centrist voters express somewhat more favorable views, while respondents with subnational identities and supporters of Brexit express significantly more skeptical views of IFDI. The expected positive association of the nationalism index is weaker than expected for greenfield and even negative for M&A IFDI when all other controls are included.

The main results are consistent with the predictions of the socialization hypothesis: There is no statistically significant cohort difference in greenfield IFDI attitudes, but cohorts born before 1960 express substantially more skeptical views of M&A IFDI than cohorts born after 1975, while the attitudes of the "buffer" cohort of respondents born between 1960 and 1975 lie in between the preferences of these two groups. Calculations of the marginal effect suggest that, holding all else constant, individuals born before 1960 are about 9% more likely to see M&A IFDI as "rather bad" and 6% more likely to see them as "very bad" compared to respondents born after 1990. The size and significance of this effect are barely affected by the simultaneous inclusion of the variables controlling for respondents' broader political-ideological beliefs in various ways (Model 4 vs. Model 3), which—in conjunction with the observation that cohorts born before 1960 are only more opposed to M&A IFDI but not greenfield IFDI—supports the claim that the observed intergenerational differences are not merely driven by a natural trend towards conservatism or nationalism among older age groups.

4.2. Causal Mediation Analysis

Finally, to disentangle the effect of economic narratives from potential other impactful cognitive experiences shared by the members of a specific birth cohort (such as the end of the Cold War), I perform a CMA.

CMA methods offer ways to go beyond merely testing the theoretical consistency of patterns of association

Table 2. Main results.

	Skepticism towards greenfield IFDI				Skepticism towards M&A IFDI			
	(1)		(2)		(3)		(4)	
Socialization								
Post-1975 cohorts	Reference		Reference		Reference		Reference	
1960–1975 cohorts	0.16	(0.13)	0.25*	(0.14)	0.14	(0.12)	0.03	(0.14)
Pre-1960 cohorts	−0.08	(0.12)	−0.05	(0.14)	0.44***	(0.11)	0.41***	(0.14)
Education								
GCSE	Reference		Reference		Reference		Reference	
A-levels	−0.18	(0.13)	−0.08	(0.14)	0.03	(0.12)	0.05	(0.13)
Undergraduate	−0.22	(0.12)	−0.02	(0.14)	0.05	(0.13)	0.16	(0.14)
Postgraduate	−0.32	(0.17)	−0.16	(0.19)	0.11	(0.15)	0.23	(0.19)
Household income								
<15k	Reference		Reference		Reference		Reference	
15–25k	−0.24	(0.16)	−0.09	(0.18)	−0.19	(0.16)	0.02	(0.17)
25–35k	−0.32**	(0.17)	−0.16	(0.19)	−0.27*	(0.17)	−0.12	(0.18)
35–45k	−0.46***	(0.17)	−0.29	(0.18)	−0.26	(0.16)	−0.08	(0.18)
45–65k	−0.48**	(0.20)	−0.42*	(0.22)	−0.23	(0.19)	−0.11	(0.21)
65–85k	−0.15	(0.21)	0.04	(0.24)	−0.51***	(0.19)	−0.29	(0.21)
<85k	−0.51**	(0.26)	−0.48	(0.31)	−0.24	(0.24)	−0.009	(0.29)
Skills								
Low	Reference		Reference		Reference		Reference	
Medium	−0.02	(0.12)	−0.05	(0.13)	−0.13	(0.12)	−0.23*	(0.13)
High	0.13	(0.13)	0.12	(0.14)	−0.19	(0.12)	−0.31**	(0.13)
Multinational corporation employee			−0.14	(0.13)			−0.07	(0.13)
Political ideology								
Left			Reference				Reference	
Centre-left			−0.25	(0.18)			−0.12	(0.20)
Centre-right			−0.40*	(0.23)			−0.33	(0.24)
Right			−0.31*	(0.17)			−0.07	(0.20)
Populist right			0.03	(0.23)			0.06	(0.24)
Brexit support			0.17	(0.12)			0.40***	(0.12)
Local identity			0.24**	(0.11)			0.18*	(0.10)
Nationalism index			0.002	(0.02)			−0.06***	(0.02)
Female	0.39***	(0.10)	0.38***	(0.11)	0.19**	(0.09)	0.12	(0.11)
Pseudo-log-likelihood	−653.6		−529.7		−793.0		−645.9	
Observations	567		471		559		469	

Notes: Probit coefficients displayed; robust standard errors in parentheses; constant omitted; * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

between a proximate cause x and an outcome variable y by explicitly modeling the intermediate step M intervening in the hypothesized causal chain. They propose a set of techniques that aim to decompose a causal effect into its *indirect* and *direct* components, where the former relates to the proportion of the total effect that is mediated through the specific hypothesized causal mechanism and the latter to the part of the effect absorbed by all other mechanisms linking x and y.

In the case at hand, the aim is to distinguish the (indirect) effect of socialization from other uncontrolled mechanisms through which being born before 1960 may affect individuals' skepticism towards M&A IFDI. To operationalize the hypothesized mediating variable, I employ three survey questions, which asked respondents about their agreement with different statements that together aim to capture the main principles of the discourse of economic statism. Specifically, the questions asked respondents to indicate on a five-point scale how strongly they (dis-)agreed with the following suggestions:

- "To guarantee the long-term prosperity of our nation, we cannot just rely on the international economy. Our government has to think in national terms and defend our economic sovereignty."
- "For the good of the national economy, it is essential to have strong domestic companies that are owned by UK nationals."
- "Foreign companies cannot be trusted to act in our national interest."

Based on the answers to these questions, an "economic statism index" is created, which aggregates individual responses on a scale from 1 (respondent strongly disagrees with all three statements) to 13 (respondent strongly agrees with all three statements).

To evaluate the extent to which the M&A IFDI skepticism of pre-1960 cohorts is mediated by statist economic beliefs, I rely on the work by Imai et al. (2011) which integrates the CMA logic in the potential outcomes framework and makes it possible to estimate average causal mediation effects (ACME) in nonlinear settings. The results are presented in Table 3 and Figure 3 below.

In the first step (Model 5 in Table 3), the strength of the correlation between the binary dummy variable identifying cohorts born before 1960 (x) and respondents' agreement with statist economic beliefs (M) is assessed in a linear regression. In the second step (Model 6 in Table 3), I run an ordered probit model as before but now include the economic statism index as the main independent variable. The economic statism index is strongly significant while the substantive and statistical significance effect of the pre-1960 dummy is much reduced, which is a clear sign of mediation.

Finally, to estimate the substantive effect of mediation, I run the algorithm provided by Tingley et al. (2014). The results are presented graphically in Figure 3 where

Table 3. Results of the CMA.

	OLS predicting economic statism index (*M*)		Ordered probit predicting M&A IFDI skepticism	
	(5)		(6)	
Economic statism index	(=DV)		0.21***	(0.02)
Pre-1960 cohorts	0.82***	(0.19)	0.23*	(0.10)
Education				
GCSE	Reference		Reference	
A-levels	−0.32	(0.23)	0.08	(0.12)
Undergraduate	−0.41*	(0.24)	0.14	(0.12)
Postgraduate	−0.23	(0.30)	0.13	(0.16)
Household income				
<15k	Reference		Reference	
15–25k	−0.60**	(0.31)	−0.08	(0.16)
25–35k	−0.72**	(0.31)	−0.14	(0.17)
35–45k	−0.85***	(0.31)	−0.10	(0.17)
45–65k	−0.49	(0.36)	−0.18	(0.19)
65–85k	−1.05**	(0.40)	−0.36*	(0.21)
>85k	−0.36	(0.43)	−0.17	(0.23)
Skills				
Low	Reference		Reference	
Medium	0.51**	(0.22)	−0.22*	(0.12)
High	−0.12	(0.25)	−0.17	(0.13)
Female	−0.09	(0.18)	0.23**	(0.10)
Model fit	$R^2 = 0.09$		AIC = 1,525.1	
Observations	555		555	

Notes: Probit coefficients displayed; robust standard errors in parentheses; constant omitted; DV = dependent variable; AIC = Akaike information criterion; * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

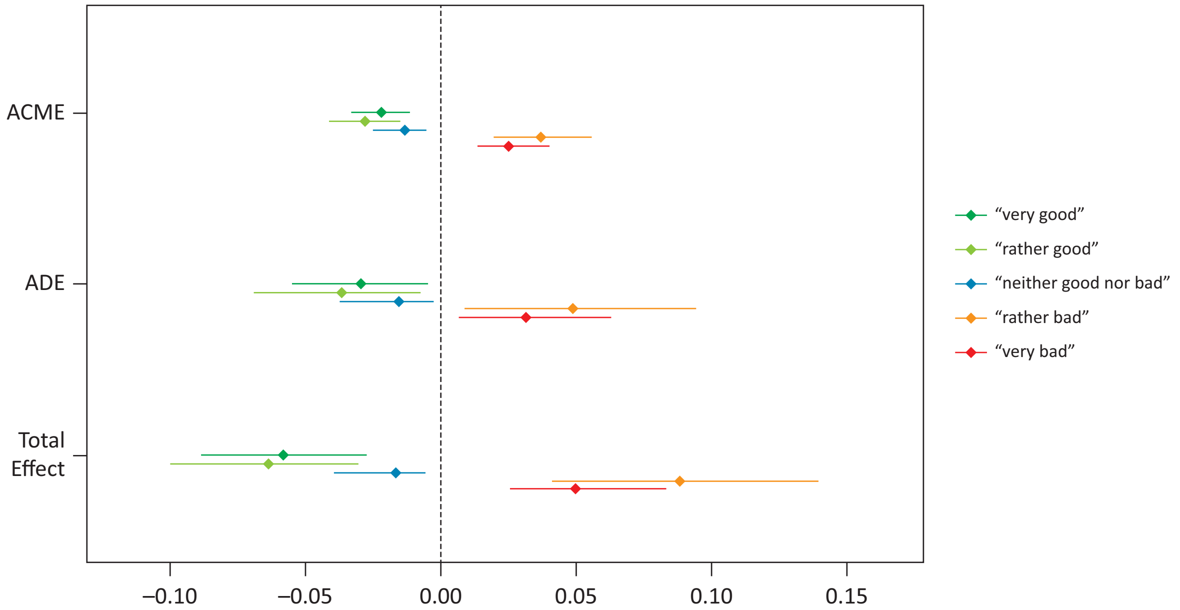

Figure 3. Estimation of the mediation of the pre-1960 cohort effect on M&A IFDI skepticism through economic statist beliefs (ACME).

"Total Effect" indicates the size of the effect of the pre-1960 cohort dummy as a whole, "ACME" the part of the effect that is mediated through economic statist beliefs, and "ADE" the remaining part of the effect that can be explained by other mechanisms. The estimations suggest that close to half of the total effect of the cohort variable is due to differences in agreement with economic statist beliefs.

5. Conclusions

Dominant approaches in international political economy emphasize the role of individuals' self-interest as the main driver of mass attitudes towards foreign direct investments, neglecting the role of ideational factors. Against this background, this article argues that what individuals *believe* to be in their interest depends not only on their material position in the economy but also on the perceived legitimacy of certain economic actors and transactions. Economic narratives can play an important role in determining how individuals perceive the economy and thereby shape individuals' policy preferences. The empirical results presented are consistent with this claim.

The bigger theoretical take-away is that studies of globalization attitudes could benefit from paying greater attention to the social sources of the legitimacy of transnational economic actors and events, and how they can shape the formation of individual preferences. The material reality of the world economy is too complex to be "seen." It thus has to be told. In some sense, to paraphrase Wendt (1992), the economy, therefore, is what narratives make of it. Story-telling frames matter for the politics of globalization.

Empirically, the study in the first instance contributes to understanding the ideational foundations of the hyper-globalization period of the 1990s and 2000s. Whereas much has been written about the interests and institutional factors behind the drive to liberalize the world economy in the late 20th century, the sources of the social support of (or lack of more active resistance towards) this project remain less well understood. The findings from this study indicate that the successful propagation of globalization-friendly narratives played an important—yet frequently overlooked—role in making the opening up of national economies to global competition acceptable to the public.

At the same time, the results can also help our understanding of the unfolding backlash against unfettered globalization in present-day politics (Campbell-Verduyn et al., 2021; Lavery & Schmid, 2021; Meunier & Nicolaidis, 2019; Schmitz & Seidl, 2022; Trubowitz & Burgoon, 2020; Weinhardt & ten Brink, 2020). Many studies have attributed the rise of anti-globalist forces to the growing threats to local cultures brought about by technological advances and immigration, or economic grievances suffered in the aftermath of the North Atlantic financial crisis. The findings from this research suggest that it may not have been these structural trends alone which triggered the growing resistance to the primacy of global markets, but also the ability of anti-globalist discourses to make sense of these developments in people's minds (cf. Walter, 2021). Just as economic narratives played a role in legitimizing the liberalization of the world economy in the 1990s and 2000s, we need to take them seriously to understand the erosion of the consensus behind the liberal international order in an era of resurging geopolitical rivalries.

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Conflict of Interests

The author declares no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the author (unedited). Replication files are available on the Harvard Dataverse: https://doi.org/10.7910/DVN/GBFGF9

References

Abdelal, R., Blyth, M., & Parsons, C. (2010). *Constructing the international economy*. Cornell University Press.

Augar, P. (2000). *The death of gentlemanly capitalism: The rise and fall of London's investment banks*. Penguin.

Babić, M., & Dixon, A. D. (2022). Is the China effect real? Ideational change and the political contestation of Chinese state-led investment in Europe. *The Chinese Journal of International Politics*, *15*(2), 111–139. https://doi.org/10.1093/cjip/poac009

Beetham, D. (1991). *The legitimation of power*. Palgrave Macmillan.

Blyth, M. (2002). *Great transformations: Economic ideas and institutional change in the twentieth century*. Cambridge University Press.

Burgoon, B., & Fransen, L. (2017). Support for ethical consumerism and welfare states in the global economy: Complements or substitutes? *Global Policy*, *8*(S3), 42–55. https://doi.org/10.1111/1758-5899.12407

Callaghan, H. (2015). Something left to lose? Network preservation as a motive for protectionist responses to foreign takeovers. *Review of International Political Economy*, *22*(2), 391–418.

Cameron, A., & Palan, R. (2004). *The imagined economies of globalization*. SAGE.

Campbell-Verduyn, M. (2021). *Conjuring a cooler world? Blockchains, imaginaries and the legitimacy of climate governance* (Global Cooperation Research Paper No. 28). Centre for Global Cooperation Research. https://duepublico2.uni-due.de/servlets/MCRFileNodeServlet/duepublico_derivate_00074181/GCRP_2021_028.pdf

Campbell-Verduyn, M., Linsi, L., Metinsoy, S., & van Roozendaal, G. (2021). Covid-19 and the global political economy: Same as it never was? *Global Perspectives*, *2*(1), Article 27212. https://doi.org/10.1525/gp.2021.27212

Carstensen, M. B., & Schmidt, V. A. (2016). Power through, over and in ideas: Conceptualizing ideational power in discursive institutionalism. *Journal of European Public Policy*, *23*(3), 318–337. https://doi.org/10.1080/13501763.2015.1115534

Chwieroth, J. M. (2007). Neoliberal economists and capital account liberalization in emerging markets. *International Organization*, *61*(2), 443–463.

Chwieroth, J. M., & Sinclair, T. (2013). How you stand depends on how we see: International capital mobility as a social fact. *Review of International Political Economy*, *20*(3), 457–485.

Danzman, S. B. (2019). Foreign direct investment policy, domestic firms, and financial constraints. *Business and Politics*, *22*(2), 279–306. https://doi.org/10.1017/bap.2019.13

Danzman, S. B., & Meunier, S. (2021). *The big screen: Mapping the diffusion of foreign investment screening mechanisms*. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3913248

Danzman, S. B., & Slaski, A. (2021). Explaining deference: Why and when do policymakers think FDI needs tax incentives? *Review of International Political Economy*. Advance online publication. https://doi.org/10.1080/09692290.2021.1885475

De Ville, F., & Siles-Brügge, G. (2018). The role of ideas in legitimating EU trade policy: From the single market programme to the transatlantic trade and investment partnership. In S. Khorana & M. Garcia (Eds.), *Handbook on the EU and international trade* (pp. 243–262). Edward Elgar.

Dinas, E. (2014). Why does the apple fall far from the tree? How early political socialization prompts parent-child dissimilarity. *British Journal of Political Science*, *44*(4), 827–852. http://www.jstor.org/stable/43822006

Dingwerth, K., Schmidtke, H., & Weise, T. (2019). The rise of democratic legitimation: Why international organizations speak the language of democracy. *European Journal of International Relations*, *26*(3), 714–741. https://doi.org/10.1177/1354066119882488

Elkins, Z., Guzman, A. T., & Simmons, B. A. (2006). Competing for capital: The diffusion of bilateral investment treaties, 1960–2000. *International Organization*, *60*(4), 811–846.

Fayerweather, J. (1972). Elite attitudes toward multinational firms: A study of Britain, Canada, and France. *International Studies Quarterly*, *16*(4), 472–490. https://doi.org/10.2307/3013610

Fougner, T. (2006). The state, international competitiveness and neoliberal globalization: Is there a future beyond "the competition state." *Review of International Studies*, *32*, 165–185.

Fuller, G. W. (2021). Eurobonds versus Coronabonds: Same idea, new context, different outcome? *Global Perspectives*, *2*(1), Article 24190. https://doi.org/10.1525/gp. 2021.24190

Gertz, G. (2021). Investment screening before, during, and after Covid-19. *Global Perspectives*, *2*(1), Article 24538. https://doi.org/10.1525/gp.2021.24538

Giuliano, P., & Spilimbergo, A. (2014). Growing up in a recession. *The Review of Economic Studies*, *81*(2), 787–817. https://doi.org/10.1093/restud/rdt040

Grasso, M. T., Farrall, S., Gray, E., Hay, C., & Jennings, W. (2017). Thatcher's children, Blair's babies, political socialization and trickle-down value change: An age, period and cohort analysis. *British Journal of Political Science*, *49*(1), 17–36. https://doi.org/10.1017/s0007123416000375

Hall, P. A. (1986). *Governing the economy: The politics of state intervention in Britain and France*. Oxford University Press.

Hodges, M. (1974). *Multinational corporations and national government: A case study of the United Kingdom's experience, 1964–1970*. Saxon House.

Imai, K., Keele, L., Tingley, D., & Yamamoto, T. (2011). Unpacking the black box of causality: Learning about causal mechanisms from experimental and observational studies. *American Political Science Review*, *105*(4), 765–789.

Inglehart, R. (1989). *Culture shift in advanced industrial society*. Princeton University Press.

Jaakkola, J., Ylönen, M., & Saari, L. (2022). Imaginary capital migration and the competitive politics of corporate taxation. *New Political Economy*. Advance online publication. https://doi.org/10.1080/13563467.2022.2054967

Jandhyala, S., Henisz, W. J., & Mansfield, E. D. (2011). Three waves of BITs: The global diffusion of foreign investment policy. *Journal of Conflict Resolution*, *55*(6), 1047–1073. https://doi.org/10.1177/0022002711414373

Jensen, N. M., Malesky, E., Medina, M., & Ozdemir, U. (2014). Pass the bucks: Credit, blame, and the global competition for investment. *International Studies Quarterly*, *58*(3), 433–447. https://doi.org/10.1111/isqu.12106

Krebs, R. R. (2015). *Narrative and the making of US national security*. Cambridge University Press.

Krosnick, J. A., & Alwin, D. (1989). Aging and susceptibility to attitude change. *Journal of Personality and Social Psychology*, *57*(3), 416–425.

Lavery, S., & Schmid, D. (2021). European integration and the new global disorder. *JCMS: Journal of Common Market Studies*, *59*(5), 1322–1338. https://doi.org/10.1111/jcms.13184

Linsi, L. (2016). *How the beast became a beauty: The social construction of the economic meaning of foreign direct investment inflows in advanced economies, 1960–2007* [Doctoral dissertation, London School of Economics and Political Science]. LSE Theses Online. http://etheses.lse.ac.uk/3389

Linsi, L. (2020). The discourse of competitiveness and the dis-embedding of the national economy. *Review of International Political Economy*, *27*(4), 855–879. https://doi.org/10.1080/09692290.2019.1687557

Linsi, L. (2021). Speeding up "slowbalization": The political economy of global production before and after Covid-19. *Global Perspectives*, *2*(1), Article 24433. https://doi.org/10.1525/gp.2021.24433

Lobo-Guerrero, L., Alt, S., & Meijer, M. (2019). *Imaginaries of connectivity: The creation of novel spaces of governance*. Rowman & Littlefield.

Mannheim, K. (1970). The problem of generations. *Psychoanalytic Review*, *57*(3), 378–395.

Mayda, A. M., & Rodrik, D. (2005). Why are some people (and countries) more protectionist than others? *European Economic Review*, *49*(6), 1393–1430. https://doi.org/10.1016/j.euroecorev.2004.01.002

Metinsoy, S. (2021). A Keynesian revolution or austerity? The IMF and the Covid-19 Crisis. *Global Perspectives*, *2*(1), Article 24185. https://doi.org/10.1525/gp.2021.24185

Meunier, S., & Nicolaidis, K. (2019). The geopoliticization of European trade and investment policy. *JCMS: Journal of Common Market Studies*, *57*(S1), 103–113. https://doi.org/10.1111/jcms.12932

Narlikar, A. (2020). *Poverty narratives and power paradoxes in international trade negotiations and beyond*. Cambridge University Press.

Pandya, S. S. (2010). Labor markets and the demand for foreign direct investment. *International Organization*, *64*(3), 389–409. https://doi.org/10.1017/s0020818310000160

Pandya, S. S. (2014). Democratization and foreign direct investment liberalization, 1970–2000. *International Studies Quarterly*, *58*(3), 475–488.

Pinto, P. M. (2013). *Partisan investment in the global economy: Why the left loves foreign direct investments and FDI loves the left*. Cambridge University Press.

Porter, M. E. (1998). *The competitive advantage of nations*. Palgrave Macmillan.

Poulsen, L. N. S. (2015). *Bounded rationality and economic diplomacy: The politics of investment treaties in developing countries*. Cambridge University Press.

Puehringer, S., Porak, L., & Rath, J. (2021). *Talking about competition? Discursive shifts in the economic imaginary of competition in public debates* (ICAE Working Paper No. 123). Institute for Comprehensive Analysis of the Economy.

Rho, S., & Tomz, M. (2017). Why don't trade preferences reflect economic self-interest? *International Organization*, *71*(Suppl. 1), S85–S108. https://doi.org/10.1017/s0020818316000394

Scheve, K., & Slaughter, M. J. (2001). Labor market competition and individual preferences over immigration policy. *The Review of Economics and Statistics*, *83*(1), 133–145. http://www.jstor.org/stable/2646696

Scheve, K., & Slaughter, M. J. (2004). Economic insecurity and the globalization of production. *American Journal of Political Science*, *48*(4), 662–674. https://doi.org/10.2307/1519926

Schmidt, V. A. (2001). The politics of economic adjustment in France and Britain: When does discourse matter? *Journal of European Public Policy*, *8*(2), 247–264. https://doi.org/10.1080/13501760110041578

Schmidt, V. A. (2008). Discursive institutionalism: The explanatory power of ideas and discourse. *Annual Review of Political Science*, *11*(1), 303–326.

Schmitz, L., & Seidl, T. (2022). *Protecting, transforming, and projecting the single market: Open strategic autonomy and digital sovereignty in the EU's trade and digital policies*. SocArXiv. https://osf.io/preprints/socarxiv/wjb64

Seabrooke, L. (2006). *The social sources of financial power: Domestic legitimacy and international financial orders*. Cornell University Press.

Sherkat, D. E. (1998). Counterculture or continuity? Competing influences on baby boomers' religious orientations and participation. *Social Forces*, *76*(3), 1087–1114. https://doi.org/10.2307/3005704

Shiller, R. J. (2019). *Narrative economics: How stories go viral and drive major economic events*. Princeton University Press.

Stanley, L. (2014). "We're reaping what we sowed": Everyday crisis narratives and acquiescence to the age of austerity. *New Political Economy*, *19*(6), 895–917. https://doi.org/10.1080/13563467.2013.861412

Stanley, L., & Jackson, R. (2016). Introduction: Everyday narratives in world politics. *Politics*, *36*(3), 223–235. https://doi.org/10.1177/0263395716653423

Sum, N.-L., & Jessop, B. (2013). *Towards a cultural political economy*. Edward Elgar.

Tallberg, J., & Zürn, M. (2019). The legitimacy and legitimation of international organizations: Introduction and framework. *The Review of International Organizations*, *14*(4), 581–606. https://doi.org/10.1007/s11558-018-9330-7

Tingley, D., Yamamoto, T., Hirose, K., Keele, L., & Imai, K. (2014). mediation: R package for causal mediation analysis. *Journal of Statistical Software*, *59*(5), 1–38. https://doi.org/10.18637/jss.v059.i05

Trubowitz, P., & Burgoon, B. (2020). The retreat of the West. *Perspectives on Politics*, *20*(1), 102–122. https://doi.org/10.1017/s1537592720001218

UNCTAD. (2022). *UNCTADstat balance of payments statistics*. https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=96740

van Roozendaal, G., & de Deugd, N. (2022). Current challenges to the legitimacy of international economic and financial arrangements. *Politics and Governance*, *10*(3), 90–97.

Walter, S. (2021). The backlash against globalization. *Annual Review of Political Science*, *24*(1), 421–442. https://doi.org/https://doi.org/10.1146/annurev-polisci-041719-102405

Watson, M., & Hay, C. (2004). The discourse of globalization and the logic of no alternative: Rendering the contingent necessary in the political economy of new labour. *Policy and Politics*, *30*(4), 289–305.

Weinhardt, C., & ten Brink, T. (2020). Varieties of contestation: China's rise and the liberal trade order. *Review of International Political Economy*, *27*(2), 258–280. https://doi.org/10.1080/09692290.2019.1699145

Wellhausen, R. L. (2021). Foreign direct investment. In J. C. Pevehouse & L. Seabrooke (Eds.), *Oxford handbook of international political economy*. Oxford University Press. Advance online publication. https://doi.org/10.1093/oxfordhb/9780198793519.013.14

Wendt, A. (1992). Anarchy is what states make of it: The social construction of power politics. *International Organization*, *46*(2), 391–425. http://www.jstor.org/stable/2706858

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Article

Embedded Neoliberalism and the Legitimacy of the Post-Lisbon European Union Investment Policy

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Abstract
Much has been written about the ongoing legitimacy crisis of the global investment treaty regime and the system of investor-to-state dispute settlement (ISDS). In the European Union (EU), the proposed inclusion of investment protection provisions and ISDS in negotiations on the Comprehensive Economic and Trade Agreement (CETA) with Canada and the Transatlantic Trade and Investment Partnership (TTIP) with the United States triggered unprecedented levels of contestation. This article seeks to explain why EU responses to such contestation, in the form of an investment court system and a multilateral investment court, did not bring about a clear break away from the traditional ISDS model. Drawing on critical political economy perspectives, it regards the EU investment policy following the entry into force of the Treaty of Lisbon as deeply embedded in a broader neoliberal project mediated by material, institutional, and ideological configurations. Several factors have inhibited possibilities for more fundamental changes. The European Commission construed the lack of legitimacy as stemming from ISDS' procedural features rather than questioning its social purpose. There has been no shift in the underlying social power balance, and no comprehensive counter-project has been proposed. The European Commission enjoys relative autonomy vis-à-vis other parts within the EU institutional ensembles and wider societal interests, allowing it to block more radical solutions. Finally, there were no clear signs of a fundamental departure from the neoliberal path in terms of wider EU economic regulation.

Keywords
CETA; crisis; embedded neoliberalism; European Union; investment court system; investment protection; ISDS; legitimacy; multilateral investment court; TTIP

Issue
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1. Introduction

Ever since the entry into force of the Treaty of Lisbon in 2009, ironically designed to enhance the negotiation powers of the European Union (EU) while simultaneously increasing its democratic legitimacy, EU trade and investment policy has suffered from a lack of political and popular support. Particularly, mega-regional projects such as the Comprehensive Economic and Trade Agreement (CETA) with Canada and the ill-fated Transatlantic Trade and Investment Partnership (TTIP) with the United States were met with widespread political and societal opposition. Key to the controversies were the proposed provisions on investment protection and investor-to-state dispute settlement (ISDS), whereby foreign investors would receive exceptional legal privileges to bypass domestic courts and seek monetary compensation for damages incurred from government measures before an international tribunal. A wide variety of NGOs, trade unions, citizens, and political actors across Europe feared that the inclusion of ISDS in both trade deals would threaten democratic governance and the rule of law. This contributed to unprecedented levels of politicization to such an extent that EU Trade Commissioner Cecilia Malmström recognized that ISDS had become "the most toxic acronym in Europe" (Ames, 2015). Rather than abandoning ISDS altogether, the European Commission presented the investment court system (ICS) to restore public legitimacy, with the aim of establishing a permanent multilateral investment court (MIC).

In EU studies, various scholars have examined the contentious politics surrounding TTIP and other EU trade negotiations (De Bièvre & Poletti, 2020; De Ville & Siles-Brügge, 2015), with several highlighting the crucial role of NGOs in driving the politicization of EU trade policy (Eliasson & Huet, 2018; Gheyle, 2020). Particularly, some looked at the political responses to the erosion of its legitimacy and subsequent politicization of the ISDS system and assessed whether the EU reforms had been able to restore the necessary legitimacy (Diependaele et al., 2019; Dietz et al., 2019; Herranz-Surrallés, 2020). Such studies often build on institutionalist approaches that refer to legitimacy as resting on the particular perceptions of relevant actors and the widely shared beliefs in the appropriateness of the purposes, procedures, and performance of an international institution. Accordingly, legitimacy gaps may exist in case of incongruence between the institutional features and generalized standards of appropriateness, and subsequent legitimacy crises may induce institutional change (Lenz & Viola, 2017; Tallberg & Zürn, 2019). However, these approaches say little about the circumstances under which such changes may occur and why certain solutions prevail over others at a specific moment in time. Likewise, the politicization literature refers to situations when the salience of an institutional arrangement increases, the range of involved actors expands, and their respective positions become polarized (de Wilde et al., 2016). However, such approaches are premised on the assumption of a plurality of actors and interests competing on equal terms without considering deeper structural inequalities in material, institutional, and ideological power. Constructivist approaches have revealed how the Commission managed to overcome the politicization of ISDS and generate support for the reforms through discursive strategies (Siles-Brügge, 2017) but do not explain why the EU did not abandon the ISDS regime altogether or choose more radical reforms.

This article seeks to contribute to an understanding of the structural conditions under which institutional and regulatory change may occur in the face of a legitimacy crisis. It sets out to explain how and why EU actors have responded to politicization and why this has not resulted in a fundamental break away from the traditional ISDS model. Taking a critical political economy perspective, the starting point is to consider the social foundations of the ISDS regime and to place its "legitimate social purpose" (Ruggie, 1982, p. 382) in the context of broader social power relations. Particularly, it takes the post-Lisbon EU investment policy, crystallizing in EU free trade agreements (FTAs), as materially, institutionally, and ideologically embedded in a broader neoliberal project aimed at transnational market expansion and strengthening the global position of the EU as an economic powerhouse (Verbeek, 2021). Although the eroding legitimacy reveals the political limits of the neoliberal project, the article aims to explain the ability of the Commission to seize moments of crisis to reinvent and reinforce dominant modes of foreign investment regulation. Following Wigger and Buch-Hansen (2014), it is argued that institutional change is conditioned by the ways in which crisis moments are interpreted, whether there is a shift in the underlying social power balance, whether there is a clear counter-project that can challenge existing arrangements, the ways in which regulatory institutions respond, and whether there are similar changes in wider forms of regulation.

The article is structured as follows. Section 2 conceptualizes the social embeddedness of regulatory and institutional arrangements and sets out the preconditions for change in the face of a crisis. Section 3 analyses the making of the post-Lisbon EU investment policy and its contestation in the wake of the TTIP and CETA negotiations while critically examining the EU responses in the form of the ICS and MIC proposals. Section 4 explains the lack of a fundamental break away from the neoliberal project in the field of EU foreign investment regulation.

2. Legitimacy, Crisis of Authority, and Regulatory Change

From a critical political economy perspective, regulatory and institutional regimes should be taken as deeply embedded in broader social power relations underpinning the capitalist system (Jessop, 2002). Hence, regulation must not be understood as imposed in a fixed and pre-given way but rather as political practices that are deeply engrained in and mediated through an ensemble of class-based, institutional, and ideological configurations in relation to dominant patterns of capital accumulation (Cahill, 2014; Polanyi, 2001). Materially, social power balances emanate from the unequal position that different classes and class fractions have in relation to capital accumulation structures. Institutionally, the state and state-like structures such as the EU form the social terrain in which social groups and classes struggle for the recognition and pursuit of their strategic interests. And ideologically, regulatory and institutional arrangements are informed by discourses as structured sets of ideas that social classes might draw from when formulating and legitimating their political strategies (Hay & Rosamond, 2002, p. 151). Ideas and discourses are crucial rallying devices around which social groups can mobilize and forge alliances with other social groups while at the same time helping to legitimize their specific interests as the general interest. The hegemonic power of a dominant social group or class is not simply obtained from its dominant economic position but has to be constructed and compromised (Gramsci, 1971). Social and political power can then be considered legitimate if, according to Beetham (1991, pp. 16–17), it not only conforms to established rules but, more importantly, those rules can be justified by reference to beliefs shared by both dominant and subordinate groups, and if there is evidence of consent by the subordinate to the power relation. Hence, legitimation is a "tool of social control" (Hurd, 2019, p. 723) to produce consent for particular regulatory and institutional regimes that serve a particular social purpose bound up with the particular class nature of a hegemonic project.

Hegemonic projects are not static or everlasting but tend to follow particular trajectories during their "life course" due to the contradictory and crisis-ridden nature of global capitalism and changing social power constellations (van Apeldoorn & Overbeek, 2012, pp. 6–8). Hegemonic crises may occur when the underlying material, institutional, and ideological configurations of a hegemonic project are disrupted, and dominant social classes are no longer able to manufacture consent for the implementation of their policies, whereby prevailing institutional and economic arrangements are subject to eroding legitimacy. This may lead to a "crisis of authority" that leaves an ideological void and offers moments of opportunity for different crisis solutions whereby alternative projects are explored and shaped (Babic, 2020, p. 772; Gramsci, 1971, pp. 210–211). Such "moments of disjunction and relative openness" are marked by the "trial-and-error search for new institutional fixes to restore accumulation and restabilize social relations" (Jessop & Sum, 2006, p. 326). At the same time, the socially embedded nature of regulatory and institutional arrangements also makes them highly resistant to retrenchment, and crisis moments also generate political opportunities for institutional reinvention and reinforcement, thereby showing that threats to their survival can be exploited as opportunities for expansion (Cahill, 2014, p. xi; Jessop, 2016, p. 417). Hence, struggles over crisis interpretations and solutions are open-ended as they are discursively, and thus politically, mediated.

Wigger and Buch-Hansen (2014, pp. 115–119) offer a useful framework for assessing the likelihood of regulatory and institutional change in the face of a crisis and identify five interrelated factors that condition how governments respond and prefer certain solutions over others. First, the ways in which the nature of a crisis is construed crucially shape how governments respond and intervene. Incremental change is likely to take place if a moment of crisis is mainly perceived as derived from certain elements of an institutional regime rather than from its underlying social purpose or objective. In contrast, systemic or paradigmatic reform is to be expected when a crisis is considered in more structural terms and an institution's underlying rationale is questioned (e.g., Roberts, 2018). Second, regulatory shifts are likely if there is a fundamental shift in the underlying social power balance concerning newly emerging accumulation structures. Capitalist crises may disrupt and challenge previously dominant accumulation structures and associated social power constellations and give rise to new ones with different fractions of capital and labor becoming hegemonic (i.e., productive/financial or transnational/national; Van der Pijl, 2012). These new fractions may also have different preferences regarding the organization of the economy and may promote regulatory and institutional change. Third, existing institutional arrangements are more likely to change or be replaced in the presence of a concrete counter-project that enjoys the support of contending social forces. Increased social contestation may point to eroding legitimacy of a particular regulatory regime, but social forces need to articulate solutions beyond their narrow material interest to generate necessary political support and popular legitimacy for an alternative regime. Fourth, regulatory and institutional change can either be facilitated or blocked by the dominant state institutions and agencies that control a designated policy area. The state should be understood as the material condensation of the underlying social power balance (Poulantzas, 1978, p. 132). Therefore, the state is not a neutral terrain nor is it equally accessible to all social groups. Rather, it enjoys a relative autonomy vis-à-vis societal pressure and exhibits a "strategic selectivity" that makes it more open to some types of political strategies and class fractions than others (Jessop, 2002, p. 40). In turn, regulatory and institutional arrangements may not necessarily always favor the interests of dominant social groups. And fifth, regulatory and institutional arrangements are more likely to change if there are broader changes in other parts of the regulatory architecture. State structures and regulatory and institutional regimes do not necessarily constitute a homogenous block, but a certain coherence can nevertheless emerge and institutionalize over time. Regulatory shifts in trade and investment policy may therefore be informed by similar shifts in other regulatory fields, such as competition or tax policy, or vice versa.

3. The Post-Lisbon EU Investment Policy and the Resilience of Neoliberalism

Neoliberalism as a hegemonic project—in Europe and elsewhere—emerged in the context of the collapse of the post-war order of "embedded liberalism" (Ruggie, 1982) in the 1970s, the subsequent processes of transnationalizing production and finance, and the shift in the underlying social power balance in favor of transnational fractions of capital (van Apeldoorn & Overbeek, 2012). Neoliberalism is rooted in a liberal philosophy and based on the assumption that "human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade" (Harvey, 2005, p. 2). Bilateral investment treaties and FTAs with investment provisions are key components of the neoliberal project as they offer a broad set of legally binding and enforceable property rights to foreign investors, which shield them from certain types of adverse state action and bind future generations to market disciplines, thereby contributing to the "encasement" of the economy from democratic processes (Schneiderman, 2008; Slobodian, 2018). These treaties typically consist of broad and vague rules on non-discrimination, fair and equitable treatment, and protection against uncompensated expropriation, with unrestricted access to ISDS to resolve and "depoliticize" investment disputes (Bonnitcha et al., 2017). Throughout the 1980s and 1990s, governments worldwide massively adopted bilateral investment treaties, rooted in neoliberal imaginations of foreign investment relations that dated back to the 1950s (Perrone, 2021), to promote and protect cross-border capital flows.

The entry into force of the Treaty of Lisbon in 2009 brought about important institutional and discursive opportunities for contesting the global investment treaty regime in the European context. Most notably, it brought the exclusive competence over foreign direct investment (FDI) into the framework of EU trade policy, allowing the Commission to negotiate trade and investment agreements on behalf of EU member states and develop rules regarding FDI regulation. At the same time, the global financial and economic crisis of 2008–2009 posed major challenges to the survival of the neoliberal project. The turmoil in financial markets and the worldwide economic downturn led to sharp plunges in FDI primarily in the form of divestment, including repatriated investment, dwindling intra-firm loans, and the geographical relocation of activities to emerging markets that maintained relatively high economic growth rates (Poulsen & Hufbauer, 2011). EU member states adopted interventionist measures to keep capital at home that resulted in (partial) nationalization of domestic financial institutions, protectionist trade measures, foreign investment screening, and newly introduced obstacles to outward FDI (United Nations Conference on Trade and Development, 2009). Rather than moving away from neoliberalism, the Commission sought to counter such protectionist trends and presented the expansion of the external role of the EU in global markets as a key element of its post-crisis strategy to restore EU competitiveness and foster economic growth (De Ville & Orbie, 2014; European Commission, 2010a). Subsequently, the Commission started to push for an ambitious investment policy through a new generation of FTAs with investment chapters that should "follow the available best practices to ensure that no EU investor would be worse off than they would under Member States' BITs [bilateral investment treaties]" (European Commission, 2010b, p. 11).

Since the mid-2000s, however, the global investment treaty regime has increasingly shown signs of a legitimacy crisis (Franck, 2005; Waibel et al., 2010), with the number of ISDS cases worldwide skyrocketing to over 1,100 at the time of writing. Some of these cases dealt with sensitive areas of public regulation, such as human rights, environmental protection, and financial crisis management, and delivered multimillion-dollar awards against states primarily in the Global South (Poulsen, 2015). Critics started to point to the overly expansive interpretations of investment treaty standards by arbitrators prioritizing the protection of property and economic interests of transnational investors at the expense of governments' capacity to regulate in the public interest (Van Harten & Schneiderman, 2010). Through the threat of debilitating investment claims and awards, ISDS became conceived of as a serious threat to democratic choice, providing foreign investors with a tool to bend policy-making to suit their interests, thereby contributing to "regulatory chill" (Tienhaara, 2011). Others have pointed to a wide range of procedural concerns, including, among others, the lack of independence and impartiality among arbitrators, their wide margin of discretion and inconsistent decisions, the lack of transparency and possibility of appeal, and limited avenues for affected third parties to intervene in an investment dispute (Eberhardt & Olivet, 2012; Van Harten, 2007). Such criticisms have led a growing number of governments to reconsider their investment treaties in more recent years, with the United Nations Conference on Trade and Development (2018, p. 88) concluding in 2018 that "for the first time, effective treaty terminations exceeded the number of new treaty conclusions." In addition, societal opposition and contestation to ISDS in the context of mega-regional trade projects worldwide, such as the Trans-Pacific Partnership and the Regional Comprehensive Economic Partnership, further underscored the eroding legitimacy of the neoliberal investment regime.

In Europe, a wide range of NGOs, trade unions, and other public interest groups opposed the TTIP and CETA negotiations. They argued that the proposed investment provisions were overly biased in favor of transnational corporations and potentially constrained the regulatory capacities of governments to implement policies to advance the public interest, thereby undermining democratic governance and the rule of law (Eberhardt et al., 2014; Seattle to Brussels Network et al., 2013). The ISDS mechanism was considered a "trojan horse," allowing corporations to sue governments in "secret corporate courts" in case new government regulations negatively affected their profits (Friends of the Earth Europe, 2014; Seattle to Brussels Network et al., 2013), meaning nothing less than a "full-frontal attack on democracy" (Monbiot, 2013). These concerns were underlined by a number of high-profile ISDS cases against Western states that started to make headlines. These included the case by tobacco producer Philip Morris against Australia (2011) for introducing anti-smoking legislation and the cases by Swedish energy company Vattenfall against Germany (2009, 2012) for imposing environmental obligations in the construction of a coal-fired power plant and for the decision to phase-out nuclear energy. Other groups that were more embedded within the EU institutional ensembles did not reject the negotiations but joined the opposition to ISDS (European Trade Union Confederation, 2013). Such cross-linkages were pivotal in the contestation of TTIP and CETA that centered on widely shared concerns regarding transatlantic market expansion and the concentration of corporate power to the detriment of public policy objectives and democratic accountability. The successful mobilization behind a European citizens' initiative (ECI) against TTIP and CETA helped to transform the NGO-led opposition into a broader societal backlash against ISDS, with hundreds of thousands of citizens participating in street protests across Europe.

The increased involvement of the European Parliament in EU trade policy under the Treaty of Lisbon, with its consent now required to conclude international trade and investment agreements, also opened up new institutional avenues for contestation with various political groups opposing the ISDS mechanism. Particularly, the Socialists & Democrats, holding a key position in the European Parliament, rejected ISDS in CETA and TTIP (S&D Group, 2015), while opposition also grew among social-democratic trade ministers and parliamentarians in various EU member states, most notably in Germany and France (Barbière, 2015). Against the backdrop of escalating opposition, the Commission had already temporarily suspended the TTIP negotiations to launch an online public consultation on its investment chapter, which attracted 150,000 often collectively submitted responses overwhelmingly rejecting the ISDS mechanism. Rather than fully abandoning ISDS, the Commission developed reform proposals that gained traction within social democratic circles (Siles-Brügge, 2017). After the majority of the S&D Group supported a controversial resolution adopted by the European Parliament in July 2015, which recommended replacing ISDS with a new system for resolving investment disputes (European Parliament, 2015), the Commission published its proposal for an ICS in November 2015 that would replace the existing ISDS mechanism in all ongoing and future EU investment negotiations.

The ICS sets up a semi-permanent system composed of a tribunal of first instance and an appeal mechanism consisting of adjudicators selected from a fixed roster set up by treaty parties. Adjudicators receive a monthly retainer fee and are subject to ethical requirements, including the prohibition from "double-hatting" as counsel or expert witness. A so-called "no U-turn" provision requires investors to withdraw from any domestic proceedings before submitting a claim to ICS with the purpose of prohibiting parallel claims. Transparency is enhanced through open hearings, access to documents, and the participation of third parties as *amicus curiae*. Clarification of substantive standards on fair and equitable treatment and indirect expropriation should provide better guidance for arbitral tribunals, with a novel provision reaffirming the right to regulate in the public interest.

Despite these innovations, the ICS continues to provide a preferential legal avenue only available to foreign investors and still allows them to bypass domestic courts and seek compensation for public measures despite the emphasis on the right to regulate (Vastardis, 2018). These extensive investor rights are not equated with a meaningful set of corresponding obligations, while provisions on labor, sustainable development, and corporate social responsibility are addressed through soft law mechanisms that rely on dialogue and consultation (Bernasconi-Osterwalder & Mann, 2019). Further, the ICS/MIC model does not foresee legal standing for third parties whose rights or interests may be at stake in investment disputes (Perrone, 2019). EU FTAs still require the adjudicators to have expertise in international investment law and in the resolution of trade and investment disputes, with future cases under EU FTAs likely to be handled by the same "clubby crowd of investor-friendly arbitrators" that has thus far dominated ISDS (Van Harten, 2016).

The post-Lisbon EU investment policy crystallizing in response to heightened contestation should be understood as a key manifestation of "embedded neoliberalism" (Verbeek, 2021). Following van Apeldoorn (2009), embedded neoliberalism is the hegemonic articulation of a still dominant neoliberal discourse that seeks to advance and legitimize the neoliberal project by incorporating and neutralizing different elements of alternative discourses. While embedded neoliberalism constitutes an inherently neoliberal political project aimed at the expansion of capitalist class power, the "embeddedness" component refers to the role of the state in sustaining and reproducing markets by "protecting society from the destructive effects of the self-regulating market" (Polanyi, 2001, p. 138; van Apeldoorn, 2009, p. 24). By presenting ICS as "a new, modernized system of investment courts, subject to democratic principles and public scrutiny" (European Commission, 2015a), the Commission successfully managed to co-opt certain center-left elements within the EU's power bloc with the European Parliament ratifying agreements including ICS with Canada, Vietnam, and Singapore. Meanwhile, the EU has been actively pursuing the establishment of a MIC under the auspices of the United Nations Commission on International Trade Law since 2017, which would go a step further by moving towards a system of fully tenured adjudicators to enhance independence and impartiality (United Nations Commission on International Trade Law, 2019). By focusing merely on procedural reforms rather than the underlying substantive standards and social purpose, the currently envisaged MIC would then become "a device for neoliberal rules of investment protection with even greater authority" (Sornarajah, 2016).

4. Explaining the Lack of a Fundamental Break Away From Investor-to-State Dispute Settlement

This brings us to the question of why the contestation of the post-Lisbon EU investment policy did not bring about a more fundamental break away from the neoliberal discourse regarding investment protection and ISDS. Returning to the five conditioning factors identified in Section 2 helps answer this question. First, the Commission never questioned the neoliberal investment regime and its underlying purpose but rather confirmed that "the basic objective of investment protection remains valid since bias against foreign investors and violations of property rights are still an issue" (European Commission, 2015b, p. 15). As expanding the EU's presence in global markets was a key tenet in the Commission's crisis management strategy, it perceived investment protection as "a tool for states around the world to attract and maintain FDI to underpin their economy," which was in turn promoted as a "critical factor for growth and jobs" (European Commission, 2013, pp. 3–4). The Commission construed the legitimacy crisis as primarily stemming from the ad hoc nature of dispute settlement rather than from the underlying substantive rules on investment protection. Bringing permanency in dispute settlement was expected to produce more stability and predictability for states, investors, and other actors, reducing the potential for a regulatory chill (Brown, 2018). Particularly, it was considered crucial that justice had to be "seen to be done," indicating that the Commission was more concerned with changing the perception of ISDS than with addressing its structural problems while reiterating that the main purpose of the proposed reforms was to "rebuild trust in the system and, consequently, improve the recognition and implementation of its decisions" (European Commission & Government of Canada, 2017, p. 3).

Second, there has been no significant shift in the underlying social power balance. The post-Lisbon EU investment policy continues to cater to the interests associated with transnational capital, and new generation EU FTAs further incentivize transnational accumulation structures rather than curbing them. Indeed, transnationalization strategies were a key response to the global financial and economic crisis of 2008–2009, reflected in a surge in FDI flowing out of crisis-ridden European economies targeting large (emerging) markets (Hunya & Stöllinger, 2009). Transnational capital actors such as the European Roundtable of Industrialists, BusinessEurope, and European Services Forum strongly called for the expansion of EU FTAs to ensure broad-based market access and effective protection for EU companies abroad (BusinessEurope, 2009; European Roundtable of Industrialists, 2010; European Services Forum, 2010). Following the entry into force of the Treaty of Lisbon, these groups rapidly mobilized and were highly influential in driving and sustaining much of the neoliberal content of EU FTAs due to their privileged institutional access to the Commission (Verbeek, 2021). They demanded that EU FTAs grant as good, if not better, protection than existing EU member state bilateral investment treaties, whereby the investment chapters in CETA and TTIP should serve as "golden standards" for future investment protection negotiations with key partners. In their views, investment protection was not to be traded off against public policy objectives, including human and labor rights and environmental protection, and ISDS was to be retained in future agreements (European Services Forum, 2014; Letter to Karel De Gucht, February 22, 2012, courtesy of BusinessEurope). They did not unequivocally support the EU reforms and feared that references to the right to regulate, in combination with perceived restrictions on the fair and equitable treatment and indirect expropriation standards, would limit the scope of investment protection. Also, moving away from a system in which the investor was given the opportunity to choose one of the three arbitrators towards a system based on a fixed roster of publicly appointed arbitrators who would be randomly assigned to cases raised concerns about potential bias in favor of states (BusinessEurope, 2015; European Services Forum, 2016). At the same time, they often acknowledged that some changes were required to save the investment protection system from sinking, and voiced overall support for the new EU approach. Other capital fractions representing small- and medium-sized enterprises condemned the ISDS mechanism for being too expensive and cumbersome and, therefore, only benefitting transnational corporations with the resources to litigate (Ohoven, 2014).

Third, the formation of a widespread movement against TTIP and CETA has not resulted in a clearly defined counter-project around which a new constellation of social forces could coalesce. A point of reference is the Alternative Trade Mandate developed by an alliance of more than 50 European NGOs, trade unions, farmers, and fair trade networks calling for an overhaul of the neoliberal trade regime, which envisions workable alternatives for a democratic, fair, and sustainable trade regime (Alternative Trade Mandate, 2013). This initiative successfully mobilized a broad range of different perspectives sharing common values centered on broad principles such as an increased role for governments in regulating trade and investment in pursuit of industrial and (sustainable) development strategies, prioritizing local and regional markets, universal access to public services, high labor and environmental standards, inclusiveness, and transparency. Several political groups in the European Parliament endorsed these principles, particularly in the run-up to the European elections in 2014. However, they were unable to further develop the Alternative Trade Mandate into a powerful alternative project that could challenge the neoliberal trade and investment regime. Different individual NGOs have developed similar proposals (Friends of the Earth Europe, 2018), although they have largely failed to establish the necessary political linkages and generate wider support. Meanwhile, social groups were unable to generate TTIP levels of mobilization and contestation to other ongoing and concluded EU FTA negotiations, such as with Singapore, Vietnam, Mexico, and Indonesia. Opposition to the EU FTAs became effectively reduced again to a handful of specialized NGOs criticizing particular elements of the EU trade agenda rather than challenging the neoliberal trade discourse as a whole.

Fourth, the Commission continues to enjoy significant powers reflected in its strategic selectivity vis-à-vis other parts within the EU institutional ensembles and wider societal interests. The Commission occasionally sidestepped recommendations from the European Parliament, for example, to exclude ISDS from the CETA negotiations and to maintain a state-to-state dispute settlement to address investment disputes (European Parliament, 2011, para. 11). In relation to EU member states, the Commission claimed exclusive competence on both FDI and portfolio investment under the Treaty of Lisbon and sought to present CETA as an "EU-only" deal. It was only after fierce pressure by member state governments that the Commission presented CETA as a "mixed agreement," with the exclusion of investment protection from the scope of the provisional application prior to national ratification (Siles-Brügge, 2017, p. 478). After the Court of Justice of the EU (CJEU) found in its Opinion 2/15 on the EU's powers to conclude the EU-Singapore FTA, delivered in May 2017, that portfolio investment and ISDS do not fall under the exclusive competence of the EU, the Commission started to separate out the investment protection provisions from the EU-only trade parts as a means of facilitating the ratification of trade agreements. Whereas the Commission refused to request that the CJEU check the compatibility of CETA's investment provisions with EU law (Crisp, 2015), such a request came from the Belgian government as part of the compromises reached in the wake of the tumultuous CETA signing in October 2016. By the time the CJEU delivered its Opinion 1/17 in April 2019 confirming such compatibility, 12 EU member states had already ratified the agreement. Importantly, the Commission ignored the many voices calling for a withdrawal of ISDS from EU FTAs, and its ICS/MIC model was considered a "slap in the face of public opinion" (Seattle to Brussels Network, 2015, p. 3) or a mere "rebranding exercise" (Eberhardt, 2016, p. 18). The Commission further limited citizens' participation by blocking the ECI, despite sufficient signatures having been collected, thereby restricting the democratic potential for citizen participation in EU trade policy. The CJEU ruled in May 2017 that the Commission had no legitimate reason to block the ECI and annulled the decision, after which the Commission registered the ECI in July 2017, long after CETA had been signed and ratified by the European Parliament and the TTIP negotiations had stalled (European Court of Justice, 2017).

And fifth, there were no signs of a fundamental departure from the neoliberal path within the EU. The post-crisis EU regulatory landscape has rather shown the "strange non-death" of neoliberalism, revealing its resilience in times of crisis and its flexibility to venture into new pathways (Crouch, 2011). Developments in the field of EU industrial and competition policy and broader EU macroeconomic and structural adjustment strategies have generally been pointing towards a further deepening of neoliberalism, often through processes understood in terms of "authoritarian neoliberalism" (Bruff, 2014; Wigger, 2019). A major break away from neoliberalism in the field of EU trade and investment policy would seem rather out of sync with such wider developments. Instead, the post-Lisbon EU investment policy sets out to further institutionalize and entrench neoliberalism by recalibrating and mutating the system of investment protection in response to the challenges emanating from a growing dissatisfaction with the system's institutional design.

5. Conclusions

The article has argued that despite the eroding legitimacy and increased contestation of the global investment treaty regime, no fundamental regulatory or institutional shift in the post-Lisbon EU investment policy has occurred. In response to mounting social and political opposition, EU solutions in the form of ICS and MIC proposals reflect a strategic attempt to keep as much of the system intact by incorporating procedural concessions rather than abolishing ISDS altogether and tackling the deeper structural problems that underpin the neoliberal governance of FDI. Although the global financial and economic crisis offered moments of opportunity for a break away from neoliberalism, the prevailing responses, in fact, revealed the resilience and reinforcement of neoliberalism and showed its flexibility and organicity to venture into new pathways. Conceptualized as "embedded neoliberalism," the content and form of the post-Lisbon EU investment policy suggest that neoliberalism should not be taken as a static and automatic system but rather as "an earthly process, realized through political action and institutional reinvention" (Peck, 2010, p. 33). It is precisely because of its constructed and negotiated nature that embedded neoliberalism proved capable of co-opting key oppositional forces within the EU power bloc and regaining political support and legitimacy for continued transnational market expansion and investment protection in the context of EU FTAs. The five constraining factors identified in the article help explain the absence of a more radical transformation of EU investment policy in the wake of various crises.

At the same time, the embedded neoliberal compromise remains highly fragile and continues to be contested. No single EU agreement with ICS has yet been fully ratified due to internal opposition in a number of EU member states, while externally, the Commission is struggling to generate worldwide support for its MIC proposal. Meanwhile, foreign investors continue to lodge controversial ISDS cases, for example, against climate policy measures, that have mobilized climate justice movements and grassroots campaigns to further contest and delegitimize ISDS. Although the resurgence of right-wing populist and nationalist forces enabled the Commission to re-legitimize the embedded neoliberal project, the broader crisis of the liberal international order and associated geopolitical challenges may bring certain discursive shifts, with some speaking of a "geopoliticization" of EU trade and investment policy (Meunier & Nicolaidis, 2019). The adoption of new unilateral instruments such as the 2019 FDI Screening Regulation and other trade defense measures are the first signs of a move away from a focus on free markets and the free flow of capital towards more strategic and geopolitical discourses. Following this, the renewed EU trade strategy, framed in ambiguous terms of "open strategic autonomy," aims to strengthen the EU economically and geopolitically by committing to open trade and investment regimes, sustainability and responsibility, and increased assertiveness to enforce its trade and investment interests. Although it is still too early to make definitive statements, such shifts may point to just another creative reinvention of the neoliberal project. The new trade strategy primarily reflects efforts to alter the forms and tactics through which the EU seeks to pursue its commercial interests by reconfiguring the role of the state in enforcing the neoliberal project on a global scale rather than bringing about a strategic reorientation of EU trade and investment policy and its underlying social purpose. Hence, we may find ourselves then at a critical juncture that bears a resemblance to what Gramsci (1971, p. 276) referred to as a situation in which "the old is dying and the new cannot yet be born; in this interregnum a great variety of morbid symptoms appear.''

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References

Alternative Trade Mandate. (2013). *Trade: Time for a new vision.* https://www.somo.nl/wp-content/uploads/2014/03/trade-time_for_a_new_vision-print.pdf

Ames, P. (2015, September 17). ISDS: The most toxic acronym in Europe. *Politico*. https://www.politico.eu/article/isds-the-most-toxic-acronym-in-europe

Babic, M. (2020). Let's talk about the interregnum: Gramsci and the crisis of the liberal world order. *International Affairs*, *96*(3), 767–786.

Barbière, C. (2015, January 15). France and Germany to form united front against ISDS. *EURACTIV*. https://www.euractiv.com/section/trade-society/news/france-and-germany-to-form-united-front-against-isds

Beetham, D. (1991). *The legitimation of power*. Palgrave Macmillan.

Bernasconi-Osterwalder, N., & Mann, H. (2019). CETA and investment: What is it about and what lies beyond? In M. M. Mbengue & S. Schacherer (Eds.), *Foreign investment under the Comprehensive Economic and Trade Agreement (CETA)* (pp. 339–361). Springer.

Bonnitcha, J., Poulsen, L. N. S., & Waibel, M. (2017). *The political economy of the investment treaty regime*. Oxford University Press.

Brown, C. (2018). *The European Union's approach to investment dispute settlement* [Speech transcript]. European Commission. https://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157112.pdf

Bruff, I. (2014). The rise of authoritarian neoliberalism. *Rethinking Marxism*, *26*(1), 113–129.

BusinessEurope. (2009). *Putting Europe back on track: European growth and jobs strategy post-2010*. https://www.businesseurope.eu/sites/buseur/files/media/imported/2009-02126-E.pdf

BusinessEurope. (2015). *BusinessEurope's assessment of the European Commission's proposal on a new Investment Court System*. https://www.businesseurope.eu/sites/buseur/files/media/position_papers/rex/2015-10-23_assessment_of_commission_proposal_on_a_new_investment_court_system.pdf

Cahill, D. (2014). *The end of laissez-faire? On the durability of embedded neoliberalism*. Edward Elgar.

Crisp, J. (2015, September 8). Commission won't ask EU judges to decide on legality of ISDS. *EURACTIV.* https://www.euractiv.com/section/trade-society/news/commission-won-t-ask-eu-judges-to-decide-on-legality-of-isds

Crouch, C. (2011). *The strange non-death of neoliberalism*. Polity.

De Bièvre, D., & Poletti, A. (2020). Towards explaining varying degrees of politicization of EU trade agreement negotiations. *Politics and Governance*, *8*(1), 243–253.

De Ville, F., & Orbie, J. (2014). The European Commission's neoliberal trade discourse since the crisis: Legitimizing continuity through subtle discursive change. *The British Journal of Politics and International Relations*, *16*(1), 149–167.

De Ville, F., & Siles-Brügge, G. (2015). *TTIP: The truth about the Transatlantic Trade and Investment Partnership*. Polity.

de Wilde, P., Leupold, A., & Schmidtke, H. (2016). Introduction: The differentiated politicisation of European governance. *West European Politics*, *39*(1), 3–22.

Diependaele, L., De Ville, F., & Sterckx, S. (2019). Assessing the normative legitimacy of investment arbitration: The EU's investment court system. *New Political Economy*, *24*(1), 37–61.

Dietz, T., Dotzauer, M., & Cohen, E. S. (2019). The legitimacy crisis of investor-state arbitration and the new EU investment court system. *Review of International Political Economy*, *26*(4), 749–772.

Eberhardt, P. (2016). *The zombie ISDS: Rebranded as*

ICS, rights for corporations to sue states refuse to die. Corporate Europe Observatory. https://corporateeurope.org/sites/default/files/attachments/the_zombie_isds_0.pdf

Eberhardt, P., & Olivet, C. (2012). *Profiting from injustice: How law firms, arbitrators and financiers are fuelling an investment arbitration boom*. Corporate Europe Observatory; Transnational Institute. https://corporateeurope.org/sites/default/files/publications/profiting-from-injustice.pdf

Eberhardt, P., Redlin, B., & Toubeau, C. (2014). *Trading away democracy: How CETA's investment protection rules threaten the public good in Canada and the EU*. Corporate Europe Observatory. https://corporateeurope.org/sites/default/files/trading-away-democracy.pdf

Eliasson, L. J., & Huet, P. G.-D. (2018). TTIP negotiations: Interest groups, anti-TTIP civil society campaigns and public opinion. *Journal of Transatlantic Studies*, *16*(2), 101–116.

European Commission. (2010a). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Towards a comprehensive European international investment policy* (COM/2010/0343 final). https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52010DC0343

European Commission. (2010b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Trade, growth and world affairs: Trade policy as a core component of the EU's 2020 strategy* (COM/2010/0612 final). https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52010DC0612

European Commission. (2013). *Fact sheet: Investment protection and investor-to-state dispute settlement in EU agreements*. https://www.italaw.com/sites/default/files/archive/Investment%20Protection%20and%20Investor-to-State%20Dispute%20Settlement%20in%20EU%20agreements_0.pdf

European Commission. (2015a, September 16). *Commission proposes new Investment Court System for TTIP and other EU trade and investment negotiations* [Press release]. https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5651

European Commission. (2015b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Trade for all: Towards a more responsible trade and investment policy* (COM/2015/0497 final). https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A52015DC0497

European Commission, & Government of Canada. (2017). *The case for creating a multilateral investment dispute settlement mechanism, informal ministerial meeting*. World Economic Forum. https://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155264.pdf

European Court of Justice. (2017, May 10). *The General Court annuls the Commission decision refusing the registration of the proposed European citizens' initiative "Stop TTIP"* [Press release]. https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170049en.pdf

European Parliament. (2011). *European Parliament resolution of 8 June 2011 on EU–Canada trade relations* https://www.europarl.europa.eu/doceo/document/TA-7-2011-0257_EN.pdf

European Parliament. (2015). *European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) (2014/2228(INI))*. https://www.europarl.europa.eu/doceo/document/TA-8-2015-0252_EN.pdf

European Roundtable of Industrialists. (2010). *ERT's vision for a competitive Europe in 2025*. https://www.feelingeurope.eu/Pages/ert%27s%20vision%20report.pdf

European Services Forum. (2010). *Public consultation on a future trade policy*. http://www.esf.be/new/wp-content/uploads/2010/08/ESF-Response-to-DG-Trade-Consultation-on-future-trade-policy-Final.pdf

European Services Forum. (2014). *ESF position paper on business support for key principles in bilateral investment agreements*. http://www.esf.be/new/wp-content/uploads/2014/06/ESF-Position-Paper-on-business-support-to-key-principles-in-bilateral-investment-agreements-Final-23-May-2014.pdf

European Services Forum. (2016). *ESF position paper on European Commission's proposal on investment protection and an investment court system in TTIP*. http://www.esf.be/new/wp-content/uploads/2016/02/ESF2016-01-ESF-Position-Paper-on-European-Commission-Proposal-on-Investment-Chapter-in-TTIP-January-2016-Final.docx.pdf

European Trade Union Confederation. (2013). *ETUC position on the Transatlantic trade and investment partnership*. https://www.etuc.org/sites/default/files/EN-ETUC-position-on-TTIP-2_2.pdf

Franck, S. (2005). The legitimacy crisis in investment treaty arbitration: Privatizing public international law through inconsistent decisions. *Fordham Law Review*, *73*(4), Article 1521.

Friends of the Earth Europe. (2014). *Hidden costs of EU trade deals: Investor–state dispute settlement cases taken against EU member states*. https://www.foeeurope.org/sites/default/files/publications/hidden_cost_of_eu_trade_deals_0.pdf

Friends of the Earth Europe. (2018). *Setting course for sustainable trade: A new trade agenda that serves people and the environment*. https://friendsofthe

earth.eu/wp-content/uploads/2018/04/trade_alternatives_designreport_v6_ld.pdf
Gheyle, N. (2020). Huddle up! Exploring domestic coalition formation dynamics in the differentiated politicization of TTIP. *Politics and Governance*, *8*(1), 301–311.
Gramsci, A. (1971). *Selections from the prison notebooks of Antonio Gramsci*. Lawrence and Wishart.
Harvey, D. (2005). *A brief history of neoliberalism*. Oxford University Press.
Hay, C., & Rosamond, B. (2002). Globalization, European integration and the discursive construction of economic imperatives. *Journal of European Public Policy*, *9*(2), 147–167.
Herranz-Surrallés, A. (2020). "Authority shifts" in global governance: Intersecting politicizations and the reform of investor–state arbitration. *Politics and Governance*, *8*(1), 336–347.
Hunya, G., & Stöllinger, R. (2009). *Foreign direct investment flows between the EU and the BRICS* (Research Report No. 358). The Vienna Institute for International Economic Studies.
Hurd, I. (2019). Legitimacy and contestation in global governance: Revisiting the folk theory of international institutions. *The Review of International Organizations*, *14*(4), 717–729.
Jessop, B. (2002). *The future of the capitalist state*. Polity.
Jessop, B. (2016). The heartlands of neoliberalism and the rise of the austerity state. In S. Springer, K. Birch, & J. McLeavy (Eds.), *The handbook of neoliberalism* (pp. 410–421). Routledge.
Jessop, B., & Sum, N.-L. (2006). *Beyond the regulation approach: Putting capitalist economies in their place*. Edward Elgar.
Lenz, T., & Viola, L. A. (2017). Legitimacy and institutional change in international organisations: A cognitive approach. *Review of International Studies*, *43*(5), 939–961.
Meunier, S., & Nicolaidis, K. (2019). The geopoliticization of European trade and investment policy. *JCMS: Journal of Common Market Studies*, *57*(S1), 103–113.
Monbiot, G. (2013, November 4). This transatlantic trade deal is a full-frontal assault on democracy. *The Guardian*. http://www.theguardian.com/commentisfree/2013/nov/04/us-trade-deal-full-frontal-assault-on-democracy
Ohoven, M. (2014, October 3). A resounding "no" to investment protection for CETA and TTIP. *Weekly Trends*. https://www.mql5.com/en/blogs/post/55792
Peck, J. (2010). *Constructions of neoliberal reason*. Oxford University Press.
Perrone, N. M. (2019). The "invisible" local communities: Foreign investor obligations, inclusiveness, and the international investment regime. *American Journal of International Law*, *113*, 16–21.
Perrone, N. M. (2021). *Investment treaties and the legal imagination: How foreign investors play by their own rules*. Oxford University Press.
Polanyi, K. (2001). *The great transformation: The political and economic origins of our time*. Beacon Press.
Poulantzas, N. (1978). *State, power, socialism*. Verso Books.
Poulsen, L. N. S. (2015). *Bounded rationality and economic diplomacy: The politics of investment treaties in developing countries*. Cambridge University Press.
Poulsen, L. S., & Hufbauer, G. C. (2011). *Foreign direct investment in times of crisis* (Working Paper No. 11–3). Peterson Institute for International Economics. https://www.piie.com/publications/working-papers/foreign-direct-investment-times-crisis
Roberts, A. (2018). Incremental, systemic, and paradigmatic reform of investor-state arbitration. *American Journal of International Law*, *112*(3), 410–432.
Ruggie, J. G. (1982). International regimes, transactions, and change: Embedded liberalism in the postwar economic order. *International Organization*, *36*(2), 379–415.
S&D Group. (2015). *S&D position paper on investor–state dispute settlement mechanisms in ongoing trade negotiations.* https://www.socialistsanddemocrats.eu/sites/default/files/position_paper_investor_state_dispute_settlement_ISDS_en_150304.pdf
Schneiderman, D. (2008). *Constitutionalizing economic globalization: Investment rules and democracy's promise*. Cambridge University Press.
Seattle to Brussels Network. (2015). *ISDS: Courting foreign investors. Why the Commission's proposal for an "Investment Court System" still fails to address the key problems of foreign investors' privileges*. http://www.s2bnetwork.org/wp-content/uploads/2015/10/S2B_ISDS.pdf
Seattle to Brussels Network, Corporate Europe Observatory, & Transnational Institute. (2013). *A transatlantic corporate bill of rights: Investor privileges in EU–US trade deal threaten public interest and democracy*. https://corporateeurope.org/sites/default/files/attachments/transatlantic-corporate-bill-of-rights-oct13.pdf
Siles-Brügge, G. (2017). Transatlantic investor protection as a threat to democracy: The potency and limits of an emotive frame. *Cambridge Review of International Affairs*, *30*(5/6), 464–488.
Slobodian, Q. (2018). *Globalists: The end of empire and the birth of neoliberalism*. Harvard University Press.
Sornarajah, M. (2016). *An international investment court: Panacea or purgatory?* (Columbia FDI Perspectives No. 180). Columbia Center on Sustainable Investment. https://academiccommons.columbia.edu/doi/10.7916/D8RN389W
Tallberg, J., & Zürn, M. (2019). The legitimacy and legitimation of international organizations: Introduction and framework. *The Review of International Organizations*, *14*(4), 581–606.
Tienhaara, K. (2011). Regulatory chill and the threat of

arbitration: A view from political science. In C. Brown & K. Miles (Eds.), *Evolution in investment treaty law and arbitration* (pp. 606–628). Cambridge University Press.

United Nations Commission on International Trade Law. (2019). *Possible reform of investor-state dispute settlement (ISDS): Submission from the European Union and its Member States* (A/CN.9/WG.III/WP.159/Add.1). United Nations General Assembly. https://undocs.org/en/A/CN.9/WG.III/WP.159/Add.1

United Nations Conference on Trade and Development. (2009). *Assessing the impact of the current financial and economic crisis on global FDI flows*. United Nations. https://unctad.org/system/files/official-document/webdiaeia20091_en.pdf

United Nations Conference on Trade and Development. (2018). *World Investment Report 2018: Investment and new industrial policies*. United Nations. https://unctad.org/system/files/official-document/wir2018_en.pdf

van Apeldoorn, B. (2009). The contradictions of "embedded neoliberalism" and Europe's multi-level legitimacy crisis: The European project and its limits. In B. van Apeldoorn, J. Drahokoupil, & L. Horn (Eds.), *Contradictions and limits of neoliberal European governance: From Lisbon to Lisbon* (pp. 21–43). Palgrave Macmillan.

van Apeldoorn, B., & Overbeek, H. (2012). Introduction: The life course of the neoliberal project and the global crisis. In H. Overbeek & B. van Apeldoorn (Eds.), *Neoliberalism in crisis* (pp. 1–20). Palgrave Macmillan.

Van der Pijl, K. (2012). *The making of an Atlantic ruling class*. Verso.

Van Harten, G. (2007). *Investment treaty arbitration and public law*. Oxford University Press.

Van Harten, G. (2016). *ISDS in the revised CETA: Positive steps, but is it a "gold standard"?* Centre for International Governance Innovation. https://www.cigionline.org/publications/isds-revised-ceta-positive-steps-it-gold-standard

Van Harten, G., & Schneiderman, D. (2010). *Public Statement on the international investment regime—31 August 2010*. Osgoode Hall Law School. https://www.osgoode.yorku.ca/public-statement-international-investment-regime-31-august-2010

Vastardis, A. Y. (2018). Justice bubbles for the privileged: A critique of the investor-state dispute settlement proposals for the EU's investment agreements. *London Review of International Law*, *6*(2), 279–297.

Verbeek, B. J. (2021). *The making of the EU investment policy: A critical political economy perspective* [Doctoral dissertation, Radboud University]. Radboud Repository. https://repository.ubn.ru.nl/handle/2066/235562

Waibel, M., Kaushal, A., Chung, K.-H., & Balchin, C. (Eds.). (2010). *Backlash against investment arbitration*. Kluwer Law International.

Wigger, A. (2019). The new EU industrial policy: Authoritarian neoliberal structural adjustment and the case for alternatives. *Globalizations*, *16*(3), 353–369.

Wigger, A., & Buch-Hansen, H. (2014). Explaining (missing) regulatory paradigm shifts: EU competition regulation in times of economic crisis. *New Political Economy*, *19*(1), 113–137.

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Article

Hiding in Plain Sight: The Legitimacy of Labour Standards Clauses in the EU–Ukraine Collaboration

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Abstract
Legitimacy is essential for compliance. Agreements between the European Union and Ukraine contain a commitment to enhance labour standards. Certain audiences view this commitment as just symbolic and reflective of the low degree of legitimacy the commitment has. All this could now change following Ukraine's requested accession to the EU.

Keywords
association agreement; EU; labour standards; legitimacy; Ukraine

Issue
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1. Introduction

Agreements between the European Union (EU) and Ukraine contain a commitment to enhance labour standards. Such a commitment can be seen as a genuine concern for the protection of the rights of workers, as a symbolic gesture to increase the acceptance of agreements, or as a means to protect the interests of partners with high labour costs to ensure they can remain competitive (van den Putte & Orbie, 2015; van Roozendaal, 2015, 2017).

We start from the premise that, especially where it concerns the international level, "without legitimacy, there is little power" (Beetham, 2013, p. 274). This article argues that this has been the case for Ukraine but also foresees that this may change as a result of its wish to become a member of the EU, as conditions for accession may apply.

The legitimation processes pertaining to the labour clauses in arrangements that the EU has concluded over the years with Ukraine are mainly rooted in one of the conditions that Beetham (1991) sees as contributing to the legitimacy of arrangements: legality. At the same time, these arrangements only express the shared beliefs of a part of the audience addressed, lacking consent from the state as evidenced by the lack of implementation. We argue that the provision of a legal framework is a necessary but not sufficient basis for establishing legitimacy among all audiences. Without all of Beetham's conditions being fully met, the legitimacy of labour arrangements is not sufficiently strongly rooted in a shared perspective and fails to generate supportive action.

2. The Legitimacy Argument

The relationship between the EU and Ukraine is studied in this article. This relationship is analysed with the help of Beetham's (1991, 2013) social scientific approach to legitimacy, as highlighted in the introduction to this thematic issue. Beetham (2013, p. x) argues that "legitimate power is power that is rightful, because it meets certain normative criteria about how those in power have obtained their power and how they exercise it." These normative criteria are not standards set by an outsider to the power relationship but by those involved in it. This approach emphasises that something is legitimate "because it can be *justified in terms of* their [those involved] beliefs" (Beetham, 2013, p. 11, emphasis in the original), it concentrates on the legal embeddedness of power and actions and rules related to its exercise, on power being exercised in accordance with shared beliefs between the power holders and those on the receiving end, and consent being actively given. At the international level, however, states are authorities and audiences simultaneously and are supplemented by a global civil society (Beetham, 2013, p. 271). However, in this article, we also consider the national civil society as an audience and, therefore, we have to consider their perspective on whether the intended common goals of the arrangements, though fair procedures agreed upon, are indeed fulfilled (Beetham, 2013, p. 272). Consent also is somewhat different on an international level than on a national level, as "legitimacy is confirmed to the extent that states comply with decisional outcomes, or refrain from acting in ways which manifestly flout the institution's rules" (Beetham, 2013, p. 272). In the case of civil society, consent or the lack thereof is, of course, expressed in different ways.

The choice for Ukraine is based upon the hypothesis that when labour standards are embedded in a comprehensive agreement—including not only a trade component but also many other elements such as security—labour policy transfer is even less likely to be successful than in trade agreements and even more likely to take on a symbolic meaning. This is because—in the eyes of the partner country to the EU agreement—the legitimacy of including labour standards is not high, and other parts of the agreement take priority. For partner countries keen to establish a relationship with the EU and seek the benefits that security and economic cooperation can bring, the inclusion of labour standards is perhaps accepted more out of necessity than willingness. In other words, labour standards are not met with open arms. Whether this line of argumentation will be sustained is studied in this article. If this hypothesis is not sustained, and policy transfer of labour standards turns out to be substantial in a comprehensive agreement such as this one, it is likely to be even more substantial in less comprehensive agreements.

By looking at the manner in which fundamental labour standards and priority conventions have been addressed in Ukraine, we assess the extent to which incorporating this value dimension into the various frameworks is more than symbolic. The proposed mechanisms, the compliance in law and practice, and the meaning of all this to the two main audiences (the Ukrainian state on the one hand and civil society, including trade union organisations, on the other) will be assessed to increase our understanding of the way in which legitimacy of international arrangements matters and are subject to change. In order to study this, we start by providing a wider perspective on EU external relations and the role of shared beliefs therein.

3. The EU's Legal Framework and the Shared Beliefs Guiding Its External Relations

Over the past decades, there has been a strong drive towards including topics in trade agreements (or trade-related parts of agreements) that were previously considered unrelated to trade. A consensus emerged where trade and other international economic transactions were seen to be embedded in the broader issues of development and sustainability. This materialised in the attention paid to labour standards. In 1995, the idea of core labour standards (CLS) was introduced at the Social Summit in Copenhagen (van Roozendaal, 2012, pp. 68–70). CLS, highlighted in the International Labour Organization's (ILO) *Declaration on Fundamental Principles and Rights at Work* (ILO, 1998), refer to the broad principles of freedom from discrimination, freedom from forced labour and child labour, and the right to organise and bargain collectively. These principles are embedded in eight fundamental ILO conventions: the freedom of association and the right to organise (no. 87), the right to organise and collective bargaining (no. 98), forced labour (no. 29), abolition of forced labour (no. 105), minimum age (no. 138), worst forms of child labour (no. 182), equal remuneration (no. 100), and non-discrimination (no. 111). In addition, in its follow-up to the ILO (2008) *Declaration on Social Justice for a Fair Globalisation*, four conventions were identified as being of prime importance to how a labour standards system is governed: labour inspection (no. 81), employment policy (no. 122), labour inspection (agriculture; no. 129), and tripartite consultation (no. 144; ILO, 2022).

Commitment to these principles is ingrained in the legal framework of the EU, for example, in the *Charter of Fundamental Rights of the European Union* and in the *European Social Charter*, where values that should guide EU institutions and member states are explicated (Rocca, 2016), as well as in legal frameworks that formulate the EU's external actions. Article 2 of the Consolidated Version of the Treaty of the European Union states that "the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities" (Consolidated Version of the Treaty of the European Union, 2012). With specific reference to external relations, Article 3.5 (further explicated in Article 21 of the Treaty of the European Union on the EU's external action) reads:

> In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international

> law, including respect for the principles of the United Nations Charter. (Consolidated Version of the Treaty of the European Union, 2012)

These EU values are expressed in political clauses, such as human rights clauses, and added to agreements. According to Hachez (2015, p. 21), they are called political by the Commission as they are striving towards the desired situation, supported by dialogue. Examples can be found in the EU's trade and development arrangements (van Roozendaal, 2017, pp. 64–70). Since 1995, human rights clauses have been included in framework agreements as essential elements, and, in 2009, the EU confirmed its intention to include political clauses as essential elements in all its agreements with third countries (Bartels, 2014, p. 6; Council of the European Union, 2013). The definition of essential elements opens the door for "appropriate" measures against a violating country under the non-execution clause, with the most far-reaching consequence being the suspension of an agreement, although this has never been used (European Parliamentary Research Service, 2019, pp. 8–9). The incorporation as essential elements means that such clauses are either part of framework agreements of the EU with third countries, which are also cross-linked to in free trade agreements or directly part of (free) trade agreements. In the latter case, respect for labour standards is referred to in a sustainability chapter (European Parliamentary Research Service, 2019, p. 2). The fact that a choice has been made to include such a chapter in trade agreements has led some to argue that labour standards have been separated from human rights by identifying them as a sustainability issue (van den Putte & Orbie, 2015, pp. 281–282), meaning they may no longer be considered an essential element. However, even if one still considered the essential element clause applicable, it has never led to trade being restricted under trade agreements containing a human rights reference (European Parliamentary Research Service, 2019, p. 7; EU's Directorate-General for Trade, 2012). Similarly, a breach of the values prior to the conclusion of an agreement has not led to a termination of negotiations, although it may delay the adoption of an agreement (European Parliamentary Research Service, 2019, pp. 5–6).

The above demonstrates that there is a legal framework in place that expresses the values shared by EU member states (such as the importance of human rights and labour rights) which allows action to be taken if such values are violated. However, it is important to note that the mere existence of a legal framework does not mean that the EU respects labour rights (see Rocca, 2016), nor that it has led to full ratification. The EU member states have ratified the (fundamental) and priority conventions. However, apart from the priority convention on labour inspection (no. 81) and on tripartite consultation (no. 144), the other priority conventions have not been ratified by all EU members (ILO, n.d., p. 8; ILO, 2021). An important question is how this framework is conveyed in the EU agreements with Ukraine.

4. Relations Between the EU and Ukraine and the Role of Labour Standards Therein

The relationship between the EU and Ukraine has evolved from a partnership and cooperation agreement (PCA) to an association agreement (AA) with an accompanying deep and comprehensive free trade area (DCFTA) to discussions about membership. These membership considerations are all the more important now that Ukraine is confronted with an invasion by the Russian Federation.

In the 1990s, the EU concluded a PCA with many countries from the post-Soviet space—including Ukraine. The PCA between the European Communities and their member states, on the one hand, and Ukraine, on the other, was signed in June 1994 (EC, 1998). It went into effect on 1 March 1998; since February 1996, an interim agreement pertaining specifically to the trade-related aspects of the PCA was in effect (EC, 1998).

When analysing the goals of the PCA, three broad categories can be discerned. First, the European Communities and their member states aim to assist Ukraine with its process of political transformation. Secondly, the PCA focuses on economic transition, with the European side offering support to its Ukrainian counterpart as it undertakes to transform what was once a centrally-planned, state-owned economy into a market economy. Thirdly, the signatories of the PCA stress the importance of safeguarding the peace and stability of not just Central and Eastern Europe but the European continent as a whole. To this end, Ukraine's independence, sovereignty, and territorial integrity must be supported, good-neighbourly relations between the former Soviet republics have to be developed, and relevant international agreements need to be respected (PCA between the European Communities and their Member States, and Ukraine, 1998). The importance that both sides attach to political transformation and economic transition is evidenced by the fact that these dimensions are considered "essential elements" of the PCA (PCA between the European Communities and their Member States, and Ukraine, 1998, Article 2). The development of good-neighbourly relations in post-Soviet space is considered to be of great significance (PCA between the European Communities and their Member States, and Ukraine, 1998, Article 3).

What immediately becomes clear is that labour standards are not at the forefront of the PCA. While the provisions regarding human rights can be taken to include labour rights, the specific attention that the two sides devote to this topic is limited. In the PCA, the first chapter, "Labour Conditions," comprises six articles that address the non-discrimination of Ukrainian nationals working in member states of the European Communities and vice versa, the coordination of social security, efforts to combat illegal migration, and improvements to the working conditions for business people, respectively (PCA between the European Communities and their Member States, and Ukraine, 1998, Articles 24–29).

The AA constituted the next step in the EU–Ukraine relationship. The political part of the AA was signed in March 2014, while the economic part was signed in May of the same year. It entered into force on 1 September 2017, after already being in effect on a provisional basis in the interim years. An important part of the AA is the DCFTA. The AA necessitates changes to Ukraine's legal framework in order to bring it into line with the relevant aspects of the EU's *acquis communautaire* (Petrov, 2021, p. 130). The importance that both sides attach to political transformation and the safeguarding of European peace and stability is highlighted by their designation as "essential elements" (AA between the European Union and its Member States, and Ukraine, 2014, Article 2). The principles of a free market economy are considered important in that they underpin relations between the two sides, with sustainable development (among other elements) playing a key role in advancing this relationship (AA between the European Union and its Member States, and Ukraine, 2014, Article 3).

More so than was the case in the PCA, the AA addresses the issue of labour standards. It does so in two ways: by emphasising the importance of the Ukrainian side approximating its legislation to that of its EU counterparts and by including specific provisions. As part of Title IV Trade and Trade-Related Matters, Chapter 13, "Trade and Sustainable Development," contains several articles that define what is meant by fundamental labour conventions and priority conventions. These point to relevant policies on the part of the United Nations and the ILO and tie sustainable trade to certain labour standards (AA between the European Union and its Member States, and Ukraine, 2014, Articles 289, 291–293). Concerning labour standards, of prime importance is that "the Parties shall promote and implement in their laws and practices the internationally recognised core labour standards" and that the "parties reaffirm their commitment to effectively implement the fundamental and priority ILO Conventions that they have ratified" (AA between the European Union and its Member States, and Ukraine, 2014, Article 291). Ukraine ratified both the eight core conventions and the four priority conventions on the governance of labour standards long before the AA had been signed (ILO, n.d., p. 8; ILO, 2021). That being said, the enforcement mechanisms applicable to other parts of the agreement are not applicable to Title IV Trade and Trade-Related Matters of the AA—to which Chapter 13 belongs (AA between the European Union and its Member States, and Ukraine, 2014, Article 478). This means that no sanctions can be evoked when the commitments of Chapter 13 are violated. The AA explicitly states that the sustainability issues are important for further integrating Ukraine into the EU market, although they are not considered an essential element (Petrov, 2021, p. 132).

In the midst of the war that the Russian Federation initiated against Ukraine in February 2022, Kyiv and Brussels redefined their relationship. On 8 April 2022, the President of the EC Ursula von der Leyen presented Ukrainian President Volodymyr Zelensky with the questionnaire that the country had to fill in as the first step on the road to EU membership ("von der Leyen handed over questionnaire," 2022). Ukraine completed this questionnaire on 17 April 2022 ("Ukraine completes questionnaire for EU membership," 2022) and in June 2022, was granted candidate membership status (European Council, 2022). Membership of the EU is open only to countries that meet the Copenhagen Criteria. These criteria have a political component ("stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities"), an economic component ("a functioning market economy and the capacity to cope with competition and market forces"), and a component that stresses the need for candidate member states to have the "administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership" (EC, n.d.). As such, Kyiv's first steps on the road towards Brussels again stress the need for Ukraine to bring its legislation in line with the European standards, including with regard to labour standards, while also once more reaffirming the importance that Ukraine and the EU attach to political transformation, economic transition, and the safeguarding of European peace and stability.

In sum, when looking at the overall development of the EU–Ukraine relationship, the sustainability dimensions of trade have not taken centre stage. While the PCA and the AA do address trade, that is far from their only purpose. The same dynamic can be discerned concerning Ukraine's integration into the EU. While issues pertaining to trade, sustainability, and labour standards are part of the *acquis communautaire* that Kyiv will have to adopt if it is to realise its ambitions, wider issues of political and economic transformation—not to mention security considerations—take precedence.

5. The Implementation of Fundamental and Priority Conventions in Ukraine

Even though labour standards are just one of the issues that characterise the EU–Ukraine relationship, the expectations regarding the changes in this area that cooperation could bring were ambitious. In the final impact assessment for an EU–Ukraine free trade agreement (FTA), it was stated that:

> The FTA is also expected to encourage an overall improvement of working conditions, health & safety standards (via regulatory approximation) and quality of work along the lines of the decent work indicators as identified by the EU and ILO. This effect will be both direct, due to the need to adjust to and comply with EU standards and more indirect,

> through the fact that the FTA will further encourage and speed up ongoing restructuring and modernisation in certain sectors which still use out-dated (and often more hazardous) technologies and production methods. (ECORYS, 2007, p. 25)

The importance of the ILO's fundamental conventions and priority conventions is clear. Especially the principles laid down in the fundamental conventions can be considered to express universally accepted values. However, sharing the belief that these labour standards matter, and ratifying the related conventions, does not mean that they are also respected and implemented. This is illustrated by the fact that the International Trade Union Confederation (ITUC) has rated the level of labour rights protection in Ukraine at level 5 (only level 5+ is worse). Compared to two of the other Eastern Partnership countries (Moldova and Georgia), labour rights protection in Ukraine is weakest (International Trade Union Confederation [ITUC], n.d.).

Therefore, there is a clear necessity for labour law reform through modernising relevant legislation, something on which both the EU and the Ukrainian side agree. As it was put in the 2020 *Association Implementation Report on Ukraine by the EC*, "the Government made the modernisation of labour relations one of its priorities, committing to respect ILO labour standards and obligations undertaken under the AA" (EC, 2020, p. 17). However, in the same report, it was also noted that "labour legislation reform including the long-anticipated adoption of a new Labour Code has stalled since March 2020" (EC, 2020, p. 17). Moreover, in a joint statement, "the parties noted the necessity to bring the Ukrainian legal framework in line with and implement ILO standards" (Trade and Sustainable Development Sub-Committee, 2020, p. 1). Joint statements are made by the Trade and Sustainable Development Sub-Committee, in which high-level officials of the parties to the AA have a seat. This Sub-Committee monitors the implementation of Chapter 13 and assesses its impact (see AA between the European Union and its Member States, and Ukraine, 2014, Article 300).

The nature of the problematic situation can be characterised as follows: The country's current labour legislation dates back to 1971, when Ukraine was still a part of the Soviet Union. Since 1991, the year that Ukraine declared its independence, several attempts have been made to amend what is now outdated legislation (ILO, 2020). Since the start of the 21st century, four attempts have been made to introduce a new, comprehensive labour law, in 2003, 2009, 2016, and most recently in 2019 (ILO, 2020). The adoption of a new legal framework would allow Ukraine to bring its labour laws in line with international standards. Also, as mentioned in the previous section, with approximation to European legislation being one of the goals of the EU–Ukraine partnership, the adoption of new labour laws is something that Brussels expects of Kyiv (ILO, 2020; Petrov, 2014, p. 24). Moreover, progress concerning the adoption of a new labour code is necessary because the current lack thereof has a ripple effect in that the alignment of Ukrainian legislation to EU standards concerning occupational safety and health has also stalled (EC, 2019, p. 15).

To date, however, labour law reform in Ukraine is proceeding in fits and starts (Yarmolyuk-Kröck et al., 2019). Several (versions) of the proposed draft laws contain clauses that go against ILO and EU directives. Regarding labour inspection, much work still remains to be done (European Union & International Labour Organization, 2018; Trade and Sustainable Development Sub-Committee, 2020, p. 2). The same goes for labour union rights, where the current draft legislation is running counter to international standards regarding freedom of association and collective bargaining (EC, 2020, p. 17; Industriall Global Union, 2021). In the joint statement of the Trade and Sustainable Development Sub-Committee (2020, p. 2), the EU reiterated the importance of compliance with ILO standards regarding freedom of association and collective bargaining. Also, the drafts of the new labour law have received criticism for the following related violations (quoting ITUC, 2021):

- Excluding working people in medium and small enterprises from the protection of the general labour law;
- a lack of safeguards to ensure work contracts comply with minimum labour standards;
- the ability of employers to abuse the system and use successive fixed-term contracts; and
- a lack of compatibility with requirements to guarantee working time, rest periods, minimum daily rest, overtime and leave.

Furthermore, concerns are not only related to the implementation of conventions but also to the lack of involvement of social partners in the reform processes (European Trade Union Confederation, 2019, 2020a, 2021).

All in all, reforms are underway but not necessarily in a manner that has resulted in harmonisation with core and other international labour standards. The ILO and the EU are critical of the developments of the last few years, which means that Ukraine has to step up its game if it is to realise the newly-offered prospect of EU membership. The signing of the AA already committed Ukraine to implement the agreed-upon provisions. However, for a country that lacked the mechanism to incorporate international obligations into its national legal framework, this is not something that can be accomplished overnight (Yarmolyuk-Kröck et al., 2019, p. 21)—even without the war and its associated costs.

The lack of change that is currently hampering Ukrainian labour law reform is related, in part at least, to our earlier analysis that labour standards are far from prominent on the EU–Ukraine agenda. Also, it has to do with the toothless way in which the implementation of labour standards is supported and monitored. Not being recognised as essential elements of the AA, labour standards have not been subject to any type of conditionality. Of course, depending on the recommendation by the EC on candidate membership status and the subsequent confirmation by the Council, this might well change as accession to the EU would be conditional on Ukraine meeting the Copenhagen Criteria. Such change has been visible in other cases. Research by Kahn-Nisser (2014) on the accession of Central and Eastern Europe countries has shown that the promise of accession to the EU and the fact that the process includes monitoring, rewarding, and naming and shaming can result in the improvement of respect for labour rights. Still, "labour rights conditionality regarding the ultimate reward of accession was rather weak: Negotiation chapters were closed, and accession was ultimately granted, despite instances of insufficient labour protection" (Kahn-Nisser, 2014, p. 387).

For now, however, we must conclude that even though the agreements with Ukraine include references to labour standards, this has not (yet) guaranteed their actual implementation. To put it into the framework of Beetham (1991, 2013), we can conclude that consent of the Ukrainian authorities is lacking. While signing the agreements and ratifying the fundamental and priority conventions provides an international legal framework and seems to underwrite the idea of a shared belief that it is important, the lack of a national legal framework and the factual situation shows that implementation is failing.

6. Procedures and Compliance: The Role of Civil Society and Trade Unions

There has been much criticism on how the EU is enforcing labour standards—or rather, failing to do so—through agreements including trade components. All kinds of consultation and monitoring mechanisms are in place, but except for fostering dialogue, results are limited. Article 299.2 of the AA (AA between the European Union and its Member States, and Ukraine, 2014) calls for the establishment of an advisory group of "independent representative organisations of civil society in a balanced representation of employers and workers organisations, non-governmental organisations as well as other relevant stakeholders." A Domestic Civil Society Advisory Group has been formed on the EU and Ukrainian sides. Besides meeting domestically, the Domestic Advisory Groups (DAGs) of the parties to the agreements come together once a year to discuss the matters relating to sustainable trade. Article 469 (AA between the European Union and its Member States, and Ukraine, 2014) also foresees the establishment of a more general Civil Society Platform that can make recommendations on the implementation of the agreement.

The introduction of these mechanisms serves mainly to draw attention to the continuing lack of implementation, and the concerns echo the above criticism. During the third meeting of the EU–Ukraine Civil Society Platform (2016, p. 3), civil society demanded:

> [T]he implementation of international labour standards and EU *acquis*—both in law and practice—on social policy, employment and labour, workplace compliance, occupational safety and health, collective bargaining regulation, social dialogue, labour legislation reform in order to balance the interests of the social partners and protect the rights of workers in compliance with the ILO fundamental and priority (81, 122, 129, 144, 167) conventions.

The meeting called attention to the fact that around six million Ukrainian workers are unprotected, the minimum wage is extremely low, there are problems concerning the implementation of conventions 81 and 129 on labour inspection, and limitations to the right to strike and collective dispute settlement. In addition, it was pointed out that the new labour legislation drafted at the meeting did not include anti-discrimination clauses (EU–Ukraine Civil Society Platform, 2016). Arguments around the same line were made in 2017 and 2018 (EU–Ukraine Civil Society Platform, 2017, 2018).

Similarly, the Ukraine DAG, established in 2018, meets with the European DAG yearly in a civil society forum (Bureau of Social & Political Developments, 2018). Joint statements are available for the last three of the five meetings held. The picture that emerges from them is not very different from those in other civil society contexts (European DAG & Ukrainian DAG, 2019, 2020, 2021). It is once again emphasised that Ukraine violates obligations stipulated under the AA and DCFTA. Some small highlights seem to be that national tripartite consultation mechanisms to facilitate social dialogue have been re-established. However, the expectations regarding its mandate and influence are clearly limited (European DAG & Ukrainian DAG, 2021). On the procedural and institutional levels, other shortcomings are identified. First, the DAGs are not invited by the Trade and Sustainable Development Sub-Committee (comprising government officials). Also, the DAGs do not have the capacity to work efficiently, and they condemn the lack of transparency of the Sub-Committee, which inhibits the work of the DAGs. Additionally, the group of experts still needs to be established by Ukraine (European DAG & Ukrainian DAG, 2021).

The procedural and institutional shortcomings are not specific to the operation of the Ukraine DAGs (see Christelijk Nationaal Vakverbond, 2021), and this is also confirmed in a study on the functioning of DAGs by Martens et al. (2020). They show that the DAGs under the specific agreements have no influence and limited monitoring capabilities, but they do meet and can be part of a dialogue. This leads, amongst others, to the conclusion that "DAGs are not considered to be merely a tool for legitimising trade agreements. Given their multiple weaknesses, however, there remains a risk that they may relapse into mechanisms that serve to legitimise free trade" (Martens et al., 2020, p. 4). Despite all kinds of difficulties, "Non-EU DAGs appreciate the potential leverage enabled by the European Commission and EU DAGs" (Martens et al., 2020, p. 5).

The above shows that different civil society and trade union audiences participate in the institutional settings of the AA. This can be seen as evidence of consent, indicating that legitimacy is still conveyed to the AA. This consent, however, is flanked by strong criticism of the lack of changes the AA achieves. At the same time, one could also argue that the lack of implementation shows a lack of consent from the other audience—the Ukrainian government. While there is a body of shared beliefs concerning labour standards, as evidenced by the acceptance of the concept of CLS and governance standards and by the ratification of the associated conventions, it can only be concluded that the legitimacy is flawed as this body of shared beliefs has not found its way to the law and practice on labour standards Ukraine. This leads to a situation where one could see the symbolism of the acceptance of the labour clause but at the same time the lack of willingness to actually implement it; in fact, this can be viewed as a lack of expression of consent from the official side.

For the civil society organisations and trade unions, the lack of progress does not seem to lead to a lack of legitimacy of the AA. For example, the Ukrainian civil society declared that:

> We consider the Agreement a comprehensive, holistic and indivisible document, which, in its totality, not only ensures political rapprochement between the EU and Ukraine, but also guarantees support to the reforms that are vital for the future development of Ukraine. (Eastern Partnership Civil Society Forum, n.d.)

And, in 2020, trade unions from Ukraine and the EU stated that:

> We fully support the European aspirations of Ukraine and its efforts for better integration with the European Union, but deplore the lack of respect by the government—as seen in its economic and social "reforms"—for the values and principles of the European Union. (European Trade Union Confederation, 2020b)

The AA is also welcomed in terms of its role in advancing development and reforms on socio-economic issues and development (European Trade Union Confederation, 2018). Still, as a consultation among civil society organisations in the context of the Eastern Partnership showed, there is a strong feeling that the EU prioritises security above human rights (Eastern Partnership Civil Society Forum, 2019).

7. Conclusion: What is The Meaning of the References to Labour Standards? The Support and Enforcement of Shared Beliefs

We started this article with the argument that international agreements (and parts thereof) need legitimacy even more than national arrangements because means of coercion are largely absent. Without legitimacy, certain parts of agreements are there but hiding in plain sight, as it were. They derive their importance from being integrated and, simultaneously, are easily ignored. At the same time, we also hypothesised that in comprehensive agreements not all parts are of equal importance, leading to a situation where they can be easily ignored. When labour standards are embedded in a comprehensive agreement including not only a trade component but also many other elements such as security, labour policy transfer is not likely to be successful and more likely to take on a symbolic meaning.

This article showed that this argument was backed up by the empirical evidence presented and that the hypothesis was confirmed in this single case. On the national level, there is a clear lack of compliance in law and practice with the labour standards enshrined in the AA. Amongst the EU and Ukraine, labour standards did not have any priority in the context of so many other issues that were raised. The role of geopolitics has become more prominent in relation to the EU's trade policies. While this aims to make the EU's trade policy more in line with its foreign policy in general, it may not necessarily contribute to its formulated values in the labour domain, Orbie (2021) argues. The case of Ukraine does not seem to point in an opposite direction.

This leads to a situation where the mere existence of a legal framework as embodied in the AA which claims to express beliefs shared between the EU and Ukraine related to the importance of labour standards does not mean that the ways in which it is executed lead to the achievement of the goals. Kyiv's track record to date when it comes to the implementation of CLS testifies to this. The crux of the matter is whether those with power to actually implement the much-needed changes subscribe to the values that are supposed to guide the EU–Ukraine relationship. The Ukrainian government seems to undervalue the need to conform to international regulations and conventions. And without such consent of the Ukrainian state, one wonders whether there were ever beliefs shared beyond their symbolic value, either between the EU and Ukraine, or shared between the Ukrainian state and civil society. Clearly, the labour standard's references in the AA are much more legitimate to civil society organisations. While the AA may not be the panacea leading to desired outcomes, the situation would not be better without it.

Until the war broke out, this lack of implementation of the labour standards clauses did not affect the legitimacy of the AA as a whole. And, if it had, the war itself would have weakened any legitimacy challenges to the

AA as derived from the weak adherence to labour standards. Civil society organisations on the Ukrainian side still expressed consent to the AA and its labour standards clause; in fact, they seem to welcome the involvement of the EU through the agreement, even with its shortcomings. This ties in with the wider trend in support of European integration. Polling suggests that since March 2014 a slim but steady majority of Ukrainians favour integration into the EU over accession to other forms of international economic cooperation (Center for Insights in Survey Research, 2021, p. 52). Undoubtedly, the war and the prospect (however distant) of membership have increased support for the EU still further. And it is the EU candidate membership that can be a game changer when it comes to the implementation of fundamental and priority conventions.

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Conflict of Interests

The authors declare no conflict of interests.

References

Association agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. (2014). *Official Journal of the European Union*, L 161/3. https://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf

Bartels, L. (2014). *The European Parliament's role in relation to human rights and investment agreements.* Directorate-General for External Policies of the Union. https://www.europarl.europa.eu/cmsdata/86031/Study.pdf

Beetham, D. (1991). *The legitimation of power*. Palgrave Macmillan.

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

Bureau of Social & Political Developments. (2018). *The constituent meeting of the Ukrainian side of the Trade and Sustainable Development Advisory Group was held*. https://en.bureau.in.ua/index.php/news/89-the-constituent-meeting-of-the-ukrainian-side-of-the-trade-and-sustainable-development-advisory-group-was-held

Center for Insights in Survey Research. (2021). *Public opinion survey of residents of Ukraine*. International Republican Institute. https://www.iri.org/sites/default/files/wysiwyg/public_-_03.2021_national_eng-_public.pdf

Christelijk Nationaal Vakverbond. (2021). *Non-paper: Strengthening and improving the functioning of EU Trade Domestic Advisory Groups*. https://www.eesc.europa.eu/sites/default/files/files/non-paper_of_the_eu_dags_strengthening_domestic_advisory_groups_oct2021_002.pdf

Consolidated Version of the Treaty on European Union, 2012. *Official Journal of the European Union*, C 326/13.

Council of the European Union. (2013). *Common approach on the use of political clauses*. https://data.consilium.europa.eu/doc/document/ST-10491-2009-REV-1-EXT-2/en/pdf

Eastern Partnership Civil Society Forum. (n.d.). *Statement of the Ukrainian National Platform: Association Agreement between EU and Ukraine is a holistic and indivisible international legal instrument*. http://archive.eap-csf.eu/assets/files/Statement-of-the-Ukrainian-National-Platform.pdf

Eastern Partnership Civil Society Forum. (2019). *Advancing Eastern Partnership: 23 civil society ideas for the policy beyond 2020*. https://eap-csf.eu/wp-content/uploads/EaP-CSF_Policy-Paper.pdf

ECORYS. (2007). *Trade sustainability impact assessment for the FTA between the EU and Ukraine within the Enhanced Agreement*. https://trade.ec.europa.eu/doclib/docs/2008/january/tradoc_137597.pdf

EU's Directorate-General for Trade. (2012). *Non paper. Using EU trade policy to promote fundamental human rights: Current policies and practices*. https://trade.ec.europa.eu/doclib/docs/2012/february/tradoc_149064.pdf

European Commission. (n.d.). *European Commission: Enlargement—Accession criteria*. https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-criteria_en

European Commission. (1998, February 27). *PCA with Ukraine enters into force* [Press Release]. https://ec.europa.eu/commission/presscorner/detail/en/IP_98_198

European Commission. (2019). *Association implementation report on Ukraine* (Joint Staff Working Document SWD(2019) 433 final). https://www.eeas.europa.eu/sites/default/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_p1_1056243.pdf

European Commission. (2020). *Association implementation report on Ukraine* (Joint Staff Working Document SWD(2020) 329 final). https://www.eeas.europa.eu/sites/default/files/2020_ukraine_association_implementation_report_final.pdf

European Council. (2022, June 23). *European Council conclusions on Ukraine, the membership applications of Ukraine, the Republics of Moldova and Georgia, Western Balkans and external relations* [Press Release]. https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022

European Domestic Advisory Group, & Ukrainian Domestic Advisory Group. (2019). *Conclusions of the third joint meeting of the European and Ukrainian Domestic Advisory Groups under the EU–Ukraine Association Agreement*. https://www.eesc.europa.eu/en/documents/conclusions/conclusions-third-joint-meeting-european-and-ukrainian-domestic-advisory-groups-under-eu-ukraine-association-agreement

European Domestic Advisory Group, & Ukrainian Domestic Advisory Group. (2020). *Conclusions of the fourth joint meeting of the European and Ukrainian Domestic Advisory Groups under the EU–Ukraine Association Agreement*. https://www.eesc.europa.eu/sites/default/files/files/4th_joint_statement_eu_ukraine_dag.pdf

European Domestic Advisory Group, & Ukrainian Domestic Advisory Group. (2021). *Conclusions of the fifth joint meeting of the European and Ukrainian Domestic Advisory Groups under the EU–Ukraine Association Agreement*. https://www.eesc.europa.eu/sites/default/files/files/joint_statement_5th_dag-to-dag_oct_2021.pdf

European Parliamentary Research Service. (2019). *Human rights in EU trade agreements: The human rights clause and its application*. https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI(2019)637975_EN.pdf

European Trade Union Confederation. (2018). *Joint statement of European and Ukrainian trade unions on trade union rights in Ukraine*. https://www.etuc.org/en/node/17156

European Trade Union Confederation. (2019). *ETUC Executive Committee statement on the lack of social dialogue on labour law reform in Ukraine*. https://www.etuc.org/en/node/18514

European Trade Union Confederation. (2020a). *Joint statement of the European and Ukrainian trade unions on the occasion of the EU–Ukraine Summit, 6 October 2020*. https://www.etuc.org/en/publication/joint-statement-european-and-ukrainian-trade-unions-occasion-eu-ukraine-summit-6

European Trade Union Confederation. (2020b). *Statement to the EU–Ukraine Association Council*. https://www.etuc.org/en/document/statement-eu-ukraine-association-council

European Trade Union Confederation. (2021). *European trade unions urge EU to implement Ukraine commitments*. https://www.etuc.org/en/document/european-trade-unions-urge-eu-implement-ukraine-commitments

European Union, & International Labour Organization. (2018). *Ukrainian labour inspection legal framework: Analysis and recommendations*. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/projectdocumentation/wcms_632756.pdf

EU–Ukraine Civil Society Platform. (2016). *Joint declaration: 3rd meeting, Kyiv, 8–9 November 2016.* https://www.eesc.europa.eu/en/documents/final-declaration/final-declaration-3rd-meeting-eu-ukraine-civil-society-platform

EU–Ukraine Civil Society Platform. (2017). *Joint declaration: 4th meeting, Brussels, 18 May 2017*. https://www.eesc.europa.eu/en/sections-other-bodies/other/ukraine-civil-society-plaftorm/documents?page=1

EU–Ukraine Civil Society Platform. (2018). *Joint declaration: 6th meeting, Brussels, 12 April 2018*. https://www.eesc.europa.eu/sites/default/files/files/declaration_6_eu_ua_csp_12_april_2018.pdf

Hachez, N. (2015). *"Essential elements" clauses in EU trade agreements: Making trade work in a way that helps human rights?* (Working Paper No. 158). KU Leuven Centre for Global Governance Studies. https://ghum.kuleuven.be/ggs/publications/working_papers/2015/158hachez

Industriall Global Union. (2021). *Unions oppose regressive labour law reform in Ukraine*. http://www.industriall-union.org/unions-oppose-regressive-labour-law-reform-in-ukraine

International Labour Organization. (1998). *ILO Declaration on fundamental principles and rights at work*. https://www.ilo.org/declaration/lang--en/index.htm

International Labour Organization. (2008). *ILO Declaration on social justice for a fair globalization*. https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang–en/index.htm

International Labour Organization. (2020). *Ukraine on its way to reform 50-year-old labour law*. https://www.ilo.org/budapest/whats-new/WCMS_760075/lang--en/index.htm

International Labour Organization. (2021). *Ratifications by country*. https://www.ilo.org/dyn/normlex/en/f?p=1000:11001::::::Fnomr

International Labour Organization. (2022). *Conventions and recommendations*. https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm

International Labour Organization. (n.d.). *The ILO and the EU, partners for decent work and social justice: Impact of ten years of cooperation*. https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_195135.pdf

International Trade Union Confederation. (n.d.). *ITUC global rights index*. https://files.mutualcdn.com/ituc/files/ITUC_GlobalRightsIndex_2021_EN_Final.pdf

International Trade Union Confederation. (2021). *Ukraine: ITUC concerned about wave of regressive* *labour laws*. https://www.ituc-csi.org/ukraine-ituc-concerned-about-labour-laws?lang=en

Kahn-Nisser, S. (2014). External governance, convention ratification and monitoring: The EU, the ILO and labour standards in EU accession countries. *European Journal of Industrial Relations*, *20*(4), 383–398. https://doi.org/10.1177/0959680113520097

Martens, D., Potjomkina, D., & Orbie, J. (2020). *Domestic advisory groups in EU trade agreements: Stuck at the bottom or moving up the ladder?* Friedrich Ebert Stiftung. http://hdl.handle.net/1854/LU-8690502

Orbie, J. (2021). EU trade policy meets geopolitics: What about trade justice? *European Foreign Affairs Review*, *26*(2), 197–202. https://doi.org/10.54648/eerr2021015

Partnership and Cooperation Agreement Between the European Communities and their Member States, and Ukraine. (1998). *Official Journal of the European Communities*, L 49/3. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A21998A0219%2802%29

Petrov, R. (2014). Approximation of laws in the EU–Ukraine Association Agreement. *Yurydychni nauky - Naukovi zapysky*, *155*, 24–26. https://core.ac.uk/download/149240871.pdf

Petrov, R. (2021). Challenges of the EU–Ukraine AA's effective implementation into the legal order of Ukraine. In S. Lorenzmeier, R. Petrov, & C. Vedder (Eds.), *EU external relations law* (pp. 129–146). Springer.

Rocca, M. (2016). Enemy at the (flood) gates: EU exceptionalism in recent tensions with the international protection of social rights. *European Labour Law Journal*, *7*(1), 52–80.

Trade and Sustainable Development Sub-Committee. (2020). *Joint statement: Ukraine–EU Trade and Sustainable Development Sub-Committee to the Joint Civil Society Forum*. https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_159004.pdf

Ukraine completes questionnaire for EU membership—Official. (2022, April 18). *EURACTIV*. https://www.euractiv.com/section/europe-s-east/news/ukraine-completes-questionnaire-for-eu-membership-official

van den Putte, L., & Orbie, J. (2015). EU bilateral trade agreements and the surprising rise of labour provisions. *International Journal of Comparative Labour Law and Industrial Relations*, *31*(3), 263–283.

van Roozendaal, G. (2012). Why international financial institutions adopt labour standards: The case of the European Investment Bank. *Studia Diplomatica*, *65*(2), 59–78. https://www.jstor.org/stable/26531533

van Roozendaal, G. (2015). The diffusion of labour standards: The case of the US and Guatemala. *Politics and Governance*, *3*(2), 18–33. https://doi.org/10.17645/pag.v3i2.182

van Roozendaal, G. (2017). Where symbolism prospers: An analysis of the impact on enabling rights of labour standards provisions in trade agreements with South Korea. *Politics and Governance*, *5*(4), 19–29. https://doi.org/10.17645/pag.v5i4.1087

von der Leyen handed over questionnaire for EU candidate country status to Zelensky. (2022, April 8). *Ukrinform*. https://www.ukrinform.net/rubric-ato/3452597-von-der-leyen-handed-over-questionnaire-for-eu-candidate-country-status-to-zelensky.html

Yarmolyuk-Kröck, K., Skoryk, M., & Andreyev, V. (2019). *Implementation of the EU-Ukraine Association Agreement: Labour law, gender equality and occupational safety and health*. Friedrich Ebert Stiftung. http://library.fes.de/pdf-files/bueros/ukraine/15764.pdf

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Article

EU Public Procurement Policy During Covid-19: A Turning Point for Legitimate EU Governance?

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Abstract
Public procurement is a policy area located between two contradictory tendencies. On the one hand, the European Commission strives for greater competition to widen procurement markets. On the other hand, the boosting of competition encounters resistance among the member states. This article investigates how these colliding tendencies played out during the initial stages of the Covid-19 crisis and, more specifically, how changes in the field of procurement affected legitimate governance in the EU. Based on institutionalist and EU governance theories, the study contributes to the literature with three principal findings. First, it demonstrates that the pandemic enabled exogenously driven changes in the field of public procurement with new policies and guidelines, while the EU's overall aims in this field were upheld. Second, the study demonstrates that the Commission was the main driver of change and that it enhanced the harmonisation of procurement rules and supranational integration despite the crisis. Third, while these changes strengthened the role of supranational actors, the study demonstrates that the changes introduced allow member states increased flexibility when it comes to the implementation. In practice, however, this flexibility has the potential to undermine the EU's initial aims, thereby jeopardising the EU's legitimacy.

Keywords
Covid-19; EU governance; European Commission; European integration; institutionalism; legitimacy; public procurement

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1. Introduction

Public procurement, the process by which public authorities procure work, goods, or services from companies, is critical to the European economy. It accounts for an astonishing two trillion euros and involves more than 250,000 public authorities per year (European Commission, 2022a). As the public sector is the primary contracting authority—financed through taxpayers' money—all citizens benefit from accurate and transparent procurement outcomes. Ideally, such outcomes serve the common good. However, public procurement is a policy area located between two contradictory tendencies in the European Union. On the one hand, the European Commission strives to widen procurement markets and enhance competition (European Commission, 2010, 2022a). On the other hand, attempts to boost competition encounter resistance from the member states (Bovis, 2016; Meulenbelt, 2016). While the preferences of supranational bodies and member states have grown increasingly diverse in times of crisis, we know little about how these tendencies affect public procurement in the EU, particularly in the wake of the major policy changes following the current Covid-19 pandemic.

The present study seeks to fill this gap in the research and poses the following question: How did the EU change its policy on public procurement in response to the Covid-19 crisis, and what are the consequences of these policy changes for accurate and transparent procurement outcomes across the EU member states? In answering this question, the study links the crisis management of the EU to the goal-fulfilment and legitimacy of policy implementation in the member states. Based on institutionalist and EU governance theories, the study examines how swift policy changes are introduced in times of crisis and the extent to which member states have discretion in implementing the policies. In addition, it considers the consequences of these changes for procurement practices in EU countries and for the legitimacy of the EU itself.

Building on the different EU treaties, procurement directives, case law, official EU documents, and newspaper articles, the study makes three contributions to the literature. First, the findings demonstrate that the Covid-19 pandemic put public procurement in Europe to the test and created a turning point in the rules relating to these policies. Due to the pandemic, the EU was confronted with a sudden need to purchase medical supplies, which led to joint procurement and a substantially increased flexibility for public buyers in the member states. Second, the pandemic opened a window of opportunity for the Commission to act as a policy entrepreneur and drive the harmonisation of procurement rules, and hence European integration, forward. Third, while these changes strengthened the decision-making powers of the Commission, the flexibility of the revised procurement rules appears to have undermined the EU's stated goals and led to the differentiated implementation of these policies in the member states. Accordingly, as accurate and transparent public procurement in the EU increasingly depends on member states' willingness and capacity to implement the rules, the policy changes in the wake of the Covid-19 crisis seem likely to jeopardise the legitimacy of EU governance.

The remainder of the article is structured as follows: The next section discusses the EU's overall policy on public procurement to provide a background on the policy. Then, I conceptualise a theoretical framework based on institutionalist and EU governance theories to analyse the changes in the policy area before and during the Covid-19 pandemic. Lastly, I map the different procurement practices to analyse the implementation of these changes and derive implications for the EU's legitimacy.

2. EU Policy on Public Procurement

Public procurement is the process by which public authorities procure work, goods, or services from companies. Since it accounts for 14% of EU gross domestic product, harmonised procurement rules aim to create a level playing field for businesses across Europe. Every year, more than 250,000 public authorities in the EU engage in procurement across Europe (European Commission, 2022a). In many sectors, such as energy, transport, health, waste management, social protection, and education, public authorities are the principal buyers. This means that public procurement provides the public sector with significant market power (Schulten et al., 2012) and makes it possible for politicians to exercise political power. For example, the public sector can use procurement as a policy instrument to boost jobs, economic growth, and investment. Moreover, it can also use procurement strategically to ensure a more resilient economy. This has been possible since 2014, when procurement directives were revised (Directive 2014/24/EU, Directive 2014/23/EU, and Directive 2014/EU/25) to allow procurement contracts to be awarded based on social and environmental criteria (Pircher, 2020b; Semple, 2015). Since procurement involves a high financial volume, efficient and well-managed procurement practices are crucial for the economy as a whole. Ideally, well-functioning procurement practices serve the common good.

Historically, procurement has been subject to increased European integration but has remained largely unaffected by market integration (Weishaar, 2016). This is due to the fact that EU public procurement is a shared competence; competencies in this area lie both at the EU and member state levels. Thus, the principle of subsidiarity applies (Treaty on European Union, 2008, Art. 5). This principle means that the EU regulates member states' procurement policies to ensure the functioning of the internal market, but that member states have discretion in how to implement them. Today, the EU focuses on the following six strategic priorities in procurement: the wider uptake of green and social criteria in procurement, the enhanced professionalization of public buyers, increased access to global procurement markets, improved transparency of procurement procedures to avoid political corruption, the boosting of digital transformation within procurement, and joint procurement (European Commission, 2017). These priorities aim to create efficient procurement markets across Europe. The Commission's objective is to improve the procurement processes in order to save money, and it has stated that a 1% increased efficiency in procurement could save €20 billion per year (European Commission, 2022a).

Due to its financial volume and its crucial political role, public procurement is critical to the European economy and has become a policy instrument for enhancing supranational integration (Pircher, 2020b). This was especially visible in the aftermath of the 2008 economic crisis when the Commission sought to harmonise the procurement regime in the 2014 directives; the stated intention was to overcome domestic constraints and avoid backsliding of national priorities (Arrowsmith, 2011). However, procurement is faced with conflicting tensions. First, the EU has traditionally been committed to the liberalisation and widening of procurement markets (European Commission, 2022a; Schmidt, 2016), while member states often seek to protect national economies (Bovis, 2016; Meulenbelt, 2016). Second, the EU today recommends that national authorities should use procurement for political purposes to counteract economic downturns (Pircher, 2020b). However, member states' capacity and willingness to embark on this path are highly divergent. In short, the EU's policy in the field of procurement provides contradictory economic and political incentives that are likely to lead to varying implementation outcomes (Treumer & Comba, 2018). Yet, despite the crucial economic and political role of procurement, we know little about how these tendencies have played out during the current Covid-19 crisis.

3. Conceptualising Policy Changes and Their Consequences for Legitimate Policy Implementation

In this section, I develop a theoretical framework to analyse changes in the EU's public procurement policies and how they affect member states' willingness to implement them correctly. Hence, the framework presented here conceptualises the inherent tension between supranational policymaking and member states' practices and how this interplay ultimately affects EU legitimacy in times of crisis, such as the current Covid-19 crisis.

3.1. Policy Change

Recent literature on institutional change makes an analytical distinction between the *source of change* (endogenous vs. exogenous) and the *time horizon* of the cause of change (short vs. long), allowing for a more in-depth analysis of how institutions transform (Gerschewski, 2021). Table 1 presents the four different types of change that result from this typology. I argue that cells A and D in Table 1 capture the most frequent sources and causes of change when studying the evolution of EU policymaking. Therefore, I focus primarily on these in the analyses.

Most policy changes during the EU's existence correspond to cell D in Table 1—that is, to changes that originate from demands within the EU institutions that unfold gradually, over longer time periods. The gradual nature of such processes of change is, for example, captured in the neo-functionalist concept of "spill-over," where enhanced integration in one policy area increases the pressure for change in another (Jensen, 2019). Moreover, cell D corresponds to the literature which argues that institutions and policies are "locked into" their own developments and routines (Pierson, 1996) and therefore tend to change incrementally (Mahoney & Thelen, 2010; Streeck & Thelen, 2005a). Mechanisms of these changes include layering—where new policies are added to the already existing ones—or displacement—where dormant resources are reactivated or recovered due to an internal change in logic or prioritisations (Streeck & Thelen, 2005b). In summary, I argue that cell D captures the most common source and cause of change in EU policymaking to date.

However, the EU has also been exposed to exogenous events or shocks, sparking more immediate policy shifts (Table 1, cell A). This means that long periods of path-dependency are interrupted by so-called critical junctures, leading to swift decisions that can open completely new paths in policy development (Baumgartner & Jones, 1993; Capoccia, 2016; Howlett & Cashore, 2009; Saurugger & Terpan, 2015). However, when considering EU policymaking, I argue that swift decisions that occur due to exogenous events rarely—if ever—imply a complete break with previous policy, as suggested in the literature on critical junctures. Thus, while changes occur within a short time due to causes that are exogenous, policy shifts in the EU tend to be incremental and characterised by layering (Falkner, 2017). Examples of exogenous events that profoundly shook the EU include the 2008 financial crisis, the refugee crisis in 2015, and the current Covid-19 crisis. While all these events had exogenous sources and led to swift responses, EU policymaking did not break with the past. Instead, policymaking in the EU often tended to enhance existing policy via integrative spillovers in areas with transnational interdependence and a supranational capacity to solve the problem, even though the issue was previously highly contested between the member states and supranational institutions (Schimmelfennig, 2018). Consequently, exogenous events that occur in short time horizons lead to demands for swift response which, in turn, tend to empower bureaucrats and EU institutions. These bureaucrats and institutions can use this momentum to act as policy entrepreneurs (Karlsson et al., 2019; Pircher, 2020a). In the wake of the multiple crises mentioned above, the Commission has had particular success in shaping certain policies more or less unilaterally and acting as a policy entrepreneur (Copeland & James, 2014).

While the abovementioned tension between the goals of supranational institutions occurred when sources of policy changes were endogenous and causes were long-term (Table 1, cell D), I argue that these problems are significantly exacerbated in times of crisis, when sources of change are exogenous and supranational institutions take swift initiatives to introduce new policies (Table 1, cell A).

3.2. Policy Changes and Consequences for Policy Implementation

In general, I argue that gradual policy changes ensure a higher degree of legitimacy since there is a longer

Table 1. Conceptualising policy changes.

Source of Change	Time Horizon of Cause	
	Short	*Long*
Exogenous to institution	A. Exogenously driven ruptures	B. Exogenous, gradual change
Endogenous to institution	C. Endogenously driven ruptures	D. Endogenous, gradual change

Source: Adapted from Gerschewski (2021, p. 222).

time horizon for shaping EU policymaking, thus enabling the involvement of more actors. Moreover, due to the longer time horizon implementing these policies allows member states a process of policy-learning and gradual adaptation. However, if change occurs more rapidly due to exogenous events such as the economic crisis or the current Covid-19 crisis, decisions are often swift and made unilaterally by supranational actors. Against this background, several scholars have demonstrated that the many crises faced by the EU (Vollaard, 2014, 2018; Webber, 2014) have sparked not only persistent implementation failures (asylum policy, euro crisis) and increased politicisation of the EU (de Wilde & Lord, 2016) but also a general rise in Euroscepticism (Bulmer et al., 2020). Furthermore, member states have often questioned the legitimacy of policy changes that were introduced in times of crisis (Scharpf, 2015; Schmidt, 2021) as these decisions were often taken unilaterally by the Commission. More specifically, the EU's responses to crises often sparked criticism from the member states as these measures tended to bypass crucial steps in the decision-making process. For example, the directly elected European Parliament was side-stepped in critical economic governance decisions during the economic crisis (Fasone, 2013). A range of studies demonstrates that the domestic desire to "take back control" originates from growing discontent with supranational decision-making, which resulted in differentiated integration where some member states commit less to or opt out of common EU policies (Schimmelfennig et al., 2015; Schimmelfennig & Winzen, 2020). The development towards differentiated integration demonstrates that EU governance is increasingly questioned in times of crisis (Lenz & Viola, 2017; Zaum, 2017), with the potential of paradigmatic changes in (at least) some EU policy areas (Schmidt, 2020). Based on the above, I argue that policy changes that are rapidly implemented within a short time horizon should depend more on member states' capacity and willingness and therefore increase the probability of implementation difficulties and differentiated implementation in the member states. In short, when change is exogenously driven and the time horizon for implementing new policies is short, we should see a decline in accurate policy implementation in the member states, which risks the legitimacy of the EU's political system.

Turning to public procurement, I argue that we should generally see tensions emerging from the EU's design of one-size-fits-all policies and member states' varying capacity and willingness to implement them. However, my main expectation is that such tensions are likely to be exacerbated in times of crisis. If such tensions grow, they have the potential to increase differentiated policy implementation among the EU countries, especially if EU provisions also allow for greater flexibility in implementing them. For example, member states may use this flexibility in implementing policies to customise them ("make them fit better") to their preferences and advantages (Thomann, 2015).

4. Taking Stock of Policy Changes in EU Policy on Public Procurement

In this study, I argue that changes in the EU's core field—the internal market—are especially relevant to analyse since these changes afford insights into the functioning of the European integration process. Moreover, in times of crisis, the internal market is the policy area in which most changes are introduced. In addition, since the global pandemic also constitutes an economic crisis, changes in the internal market are highly likely to occur. Public procurement is one main area within the internal market that became a crucial policy instrument for the EU and its member states during the pandemic. This was due to the need to jointly purchase vaccines and the member states' demand for efficient and well-managed procurement practices to purchase medical supplies. Consequently, the field of public procurement is a case where policy changes most likely were introduced during the Covid-19 pandemic.

Based on the theoretical framework, I first seek to identify policy changes in the field of public procurement before and during the Covid-19 crisis from late 2019 onwards. The first unit of analysis is therefore the policy itself. I compare the procurement regulations and provisions in the pre-pandemic period with those that were introduced during the pandemic. To identify and analyse policy changes over time, I draw on EU law—including the treaties and the 2014 Directives—communications by the Commission, and other EU official documents in the policy area, such as fact sheets, reports, and initiated infringement procedures. To classify the source and time horizon of changes, I draw on the classification by Gerschewski (2021, p. 222) in Table 1. Thereafter, I build on EU governance theories and seek to identify the actors behind the changes and their motivations. In other words, I identify whether the drivers of change are supranational or national actors, drawing on relevant documents such as press releases by the Commission, newspaper articles by Agence Europe, and other relevant EU documents and statements by policymakers. This affords insights into EU governance during the Covid-19 crisis.

Next, I analyse whether the policies introduced during the pandemic led to legitimate outcomes in practice. Therefore, I map the implementation of these policies and analyse whether and to what extent they differ from the EU's goals. For this analysis, I use the *Tenders Electronic Daily* (TED) database and the Single Market Scoreboards in public procurement, both published by the Commission. Based on the TED database, which gathers all procurement contracts within the European Single Market, I provide descriptive statistics on the trends in the procurement practices from 2009 to 2020. In doing so, I focus on two crucial criteria that afford insights into the functioning of procurement markets and whether there are risks of implementation failures. These criteria are the proportion of contracts awarded where there was only a single bidder and the proportion of procurement procedures that were negotiated with a company without any calls for bids, both analysed in terms of the numbers of offers received for each procurement contract and registered in the TED database (European Commission, 2020). While the Covid-19 crisis was still ongoing in 2021 and 2022, the most recently available data relates to the period up to 2020. One might argue that the fact that data are available only up to 2020 constitutes a clear limitation of this study. By contrast, I argue that this makes it possible to identify the overall trend and the impact of the rapid changes that emerged by the end of 2019 and the beginning of 2020 when the new procurement guidelines were introduced. I further support these data with the Single Market Scoreboards, which measure the countries' performance in procurement. Analysing both data sources affords insights into the actual functioning of the procurement practices in the member states and how they differ. Moreover, such a differentiated policy implementation across member states is visible only when considering longer periods of time, which is possible with the available databases.

5. Policy Changes in EU Policy on Public Procurement Before and During the Covid-19 Pandemic

5.1. Pre-Pandemic

The field of EU public procurement has long been marked by incremental changes towards more regulation and increased harmonisation. Increased harmonisation was achieved through the various treaties and with directives that were increasingly aimed at regulating procurement procedures and their coordination (Arrowsmith, 2005; Gordon et al., 1998; Turpin, 1972). Examples of such directives include the Remedies Directive (89/665), the Utilities Directive (90/531), and the Services Directive (92/50) in the 1980s and 1990s. In 2004, new directives were adopted to simplify procurement procedures and harmonise procurement laws (Arrowsmith, 2011, pp. 55–58). Over time, the overall policy objectives remained the same, namely the free movement of goods and services, the dismantling of trade barriers, and the harmonisation of procurement procedures among member states in order to boost economic growth (European Commission, 2010, 2022a; Meulenbelt, 2016). The policy area has therefore long been characterised by policy continuity (Streeck & Thelen, 2005b) where the source of change is endogenous to institutions and the causes of change unfold over longer periods of time (Table 1, cell D).

Moreover, in line with the typology in Table 1 (cell D), EU public procurement policy faced difficulties that originated from within—that is, the source of change was endogenous. More specifically, the provisions were vague, and the definitions were often unclear. This created immense legal uncertainty in the member states, leading to different interpretations and applications, as well as more than 400 procurement judgments delivered by the Court of Justice of the EU until 2014 (Semple, 2015, p. XXXIV). Furthermore, applying the procurement rules was challenging, and member states often failed to communicate their national transposition measures. For example, only nine member states communicated these measures timeously in the case of the Public Sector Directive and the Directive 2007/66/EC, while 11 did so for the Utilities Directive and only four for the Defence Procurement Directive (European Commission, 2012, p. 27). Between 2009 and 2011—excluding cases of non-communication—61 infringement procedures were initiated against member states, 53 of which related to incorrect applications. During the same time period, 205 cases were initiated in the EU Pilot, a problem-solving instrument launched by the Commission for solving implementation problems prior to the legal procedure (European Commission, 2012, pp. 28–29). The report on the application of procurement rules for 2013 revealed similar patterns (European Commission, 2013).

Therefore, EU procurement policy has long had an endogenous source of change resulting from policy learning based on the case law and problems in applications. However, the 2008 economic crisis constituted a turning point, or a critical juncture (Table 1, cell A), that created momentum for more extensive changes. As a response to this crisis, the Commission revised the procurement directives in 2014. Three main directives were then adopted: Directive 2014/24/EU on public procurement; Directive 2014/25/EU on procurement by entities operating in the water, energy, transport, and postal services sectors; and Directive 2014/23/EU on the award of concession contracts. These comprehensive changes were made possible as the Commission viewed public procurement as a critical policy instrument for boosting competition and ensuring growth in the wake of the economic crisis (European Commission, 2010). However, while the source of change was exogenous, the policy shifts can be classified as layering, with new policy instruments and techniques being introduced on top of the already existing ones (Mahoney & Thelen, 2010; Streeck & Thelen, 2005a). Moreover, the extensive case law gradually positioned the Court of Justice of the EU in the political centre, thus marking a shift where institutions that were previously on the periphery moved to the political centre. Put differently, institutional resources were recovered or reactivated (Streeck & Thelen, 2005b, p. 31), which implies a shift in the salience of different institutional arrangements (Streeck & Thelen, 2005b, p. 22). A common assessment found in the literature is that institutional changes such as these occur if the legitimacy of practices and institutional forms are questioned (DiMaggio & Powell, 1991; Streeck & Thelen, 2005b). This assessment partly applies to EU procurement policy in the aftermath of the economic crisis. Moreover, the introduction of new procurement procedures—and especially the inclusion of common societal, environmental, and innovative aspects as award criteria—marked a shift in logic since the dominant award criterion in the past was price (Pircher, 2020b). This changed the policy goals more fundamentally and can be classified as a third-order change (Hall, 1993). Interestingly, the EU achieved enhanced harmonisation of the procurement rules despite an increase in protectionism in many EU countries during the economic crisis.

However, the 2014 directives needed to be implemented and applied in the member states until the transposition deadline in August 2016. Since the EU policies were questioned by member states, their implementation was subject to huge domestic debates; for example, on the construction of hospitals (Sweden), airports and stations (Germany), and the question of how to apply the rules in specific areas such as ambulance services (Austria). Overall, the difficulties in implementation led to an average transposition delay of two years (European Parliament, 2020), and the Commission initiated infringement cases against nearly all member states (European Commission, 2016, 2019b). As a result, the EU and its relevant policies became increasingly politicised at the national level, meaning that their saliency and polarisation increased and these issues became more crucial to national political outcomes (de Wilde et al., 2016).

While the economic crisis created momentum for the Commission to introduce substantial policy changes in public procurement (Table 1, cell A), we also observe enhanced tensions between the EU policies and member states trying to adopt more national solutions when applying them (Treumer & Comba, 2018). The same tensions are currently visible in the wake of the initial stages of the Covid-19 pandemic. Thus, public procurement is increasingly characterised by tensions between supranational institutions and member states that were reinforced and put to the test in the current crisis (Arrowsmith et al., 2021).

5.2. During the Covid-19 Crisis

Briefly before the pandemic in 2019, heated discussions in the member states concerned one communication by the Commission that introduced the creation of an international instrument on public procurement (International Public Procurement Initiative [IPPI]) to ensure better reciprocity access to foreign markets (Agence Europe, 2019c). This instrument was to govern the participation of third-country companies in public procurement markets (European Commission, 2019a). The Commission's proposal received strong criticism, especially from the Nordic countries and Germany, as they called for a strengthening of the award criteria (Agence Europe, 2019c). Yet the Commission continued its efforts in the autumn of 2019 to ensure better access to lucrative international markets for European companies in nine central countries, including the US and China (Agence Europe, 2019a). Without the member states having come to an agreement on the IPPI (Agence Europe, 2019b), the global pandemic Covid-19 hit Europe at the beginning of 2020. However, global procurement with the US (vaccines) and China (face masks and medical equipment) became highly relevant during this time. Therefore, even though the debates at the EU level were controversial and lengthy, the global pandemic enabled further changes in global procurement. The need for joint procurements and the Commission's role in pushing the IPPI instrument forward led to an acceleration of the negotiations and, ultimately, to its adoption in the Council of the EU in June 2021 (Agence Europe, 2021). These changes made in the area of global procurement still adhered to the EU's overall goals in public procurement but were aimed at widening procurement markets.

In the wake of the pandemic, the Commission further released new guidelines for public buyers to purchase medical supplies and personal protective equipment (Communication from the Commission of 1 April 2020, 2020). These new guidelines assist member states in an emergency and apply to goods and services related to Covid-19. These changes in the EU's policy on public procurement included the following: Public buyers can now reduce the deadlines to accelerate open or restricted procedures and—to ensure flexibility—a negotiated procedure without publication can be considered. However, the European Court of Justice requires that the use of such procedures without publication should remain the exception and requires to assess whether the criteria for using them are met or not. These criteria were established by the Commission and include, for example, a daily increase in the number of Covid-19 cases. Moreover, the use of such procedures must be assessed on a case-by-case basis. Another change in the EU's policy on public procurement is that public buyers are encouraged to consider alternative solutions in the market (Communication from the Commission of 1 April 2020, 2020, p. 1). This principle focuses on extreme urgencies, such as the current Covid-19 crisis, where public buyers may need to purchase products within days or even hours. To speed up procurement procedures, public buyers may also consider contacting potential contractors within and outside the EU by phone, e-mail, or in person. Moreover, they can hire agents with better contacts in the markets, send representatives to countries that have the necessary products in stock or contact potential suppliers to agree to an increase in production. As these measures may fail to meet the needs of public buyers in the current situation, they are also encouraged to seek alternatives and innovative solutions (Communication from the Commission of 1 April 2020, 2020, p. 2). In addition, the deadlines in the open and restricted procedures may be shortened in cases of emergency from 35 days to 15 days and from 30 days to 10 days (Communication from the Commission of 1 April 2020, 2020, p. 4). These new guidelines significantly increase member states' flexibility on how to use and implement procurement. Moreover, the EU conducted single central procurement on behalf of all member states when purchasing vaccines against Covid-19.

In summary, the cause of the policy changes in the wake of the Covid-19 pandemic was clearly exogenous, while the time horizon for implementing them was exceptionally short. Although these changes are in line with previous policy goals, the increased flexibility in implementing them represents a transformative character in practice, depending on the application of the rules. This increased flexibility was directly motivated as a response to the emergency brought about by the Covid-19 crisis and would have not been granted otherwise.

In addition, analyses have revealed that the Commission was the main driver for change and unilaterally implemented policies that may backfire in practice. At the beginning of the Covid-19 outbreak, the member states realised that they needed the supranational level to lift the EU countries out of the crisis. Therefore, as in the case of the economic crisis (Karlsson et al., 2019), the pandemic created momentum for increased EU governance. The Commission used this momentum in two ways. First, if public procurement contracts at the national level exceed a certain financial threshold—which was generally the case during the pandemic—competition for those contracts takes place within European or even global markets (Directive 2014/24; World Trade Organization, 2017). As a result, supranational actors decide on the different procurement rules. Therefore, the Commission released new guidelines for public buyers to purchase medical supplies and personal protective equipment to facilitate procurement. Second, the Commission offered to run single central procurement for the first time in history on behalf of all member states when purchasing vaccines against Covid-19. While this pressure came from certain member states that were reluctant to purchase the product and carry the financial risks, it gave the Commission a mandate for joint procurement. This centralised procurement gave increased power to supranational actors, and the Commission assumed a leading role in establishing the rights and obligations of member states in relation to participation in this joint procurement (European Commission, 2020). Therefore, it is also the Commission that decides on the possibility of member states withdrawing from this mechanism. At the time of writing (June 2022), Poland wishes to withdraw from the pooled procurement mechanism, but the Commission argues that countries cannot unilaterally withdraw from the contract (Agence Europe, 2022). This illustrates the pronounced role of supranational actors in procurement. Therefore, the Covid-19 crisis potentially enabled increased supranational integration.

6. Policy Changes and Consequences for Policy Implementation

While centralised EU procurement and the new guidelines can be regarded as an indication of further harmonisation of procurement rules, there is evidence that the implementation outcomes do not always serve the common good. For example, while the acceleration of procurement procedures is efficient in the current crisis and allows for highly flexible procurement solutions, it also results in unintended consequences in practice. Since the calls for tenders are announced for a shorter time period, they also receive lower numbers of bids. One unintended consequence is that an increasing number of contracts receive only a single bid. Figure 1 demonstrates a stark trend of increased single bidders for all countries within the European Single Market from 2009 to 2020. This sharp increase began in 2016, the year of the transposition deadline of the new procurement directives that aimed to boost competition after the economic downturn (Pircher, 2020b). Moreover, Figure 1 illustrates that the trend reached its peak after the outbreak of the global pandemic at the end of 2019 and in 2020. Since the trend towards single bidders hints at increased protectionism and/or political corruption (Fazekas et al., 2021), the legitimacy of these policies is at stake. It, therefore, appears that the EU policy changes in procurement have the potential to undermine competition in practice, thus failing to achieve the EU's aim of enhancing competition.

Moreover, Figure 2 indicates that the share of procurement contracts with single bidders differs significantly across the various countries. High levels of single bidders can be seen in Eastern and Southern European countries (Bulgaria, Cyprus, the Czech Republic, Greece, Croatia, Hungary, Italy, Poland, and Slovenia) in particular. This is further supported by Figure A1 in the Supplementary File which indicates that the dispersion (standard deviation) in the share of single bidders across the various countries increases over time. For example, recent data relating to 2020 reveal that Sweden had no contracts (0%) awarded with only a single bid in 2020. This stands in contrast to Poland, where more than half of all procurement contracts received only a single bidder (European Commission, 2022b). This discrepancy across the member states is further visible in the use of negotiated procedures without publication, which allows direct awarding to preselected economic operators (Communication from the Commission of 1 April 2020, 2020). While Figure A2 (Supplementary File) indicates that the number of procedures that were negotiated with a company without any calls for bids increased in nearly all EU member states in 2020, it is again the Eastern and Southern countries that show the highest numbers (Bulgaria, Cyprus, Romania, and Slovenia). This demonstrates that the EU's aim of harmonising procurement practices is undermined in practice. Instead, we observe increasingly differentiated policy implementation across the EU countries, which enhances differentiated integration (Schimmelfennig et al., 2015).

Based on these analyses, it appears that the EU's aims and policy changes introduced in procurement in times of crisis may backfire in practice and have the opposite effect, namely undermining the competition and harmonisation of procurement practices. This potentially

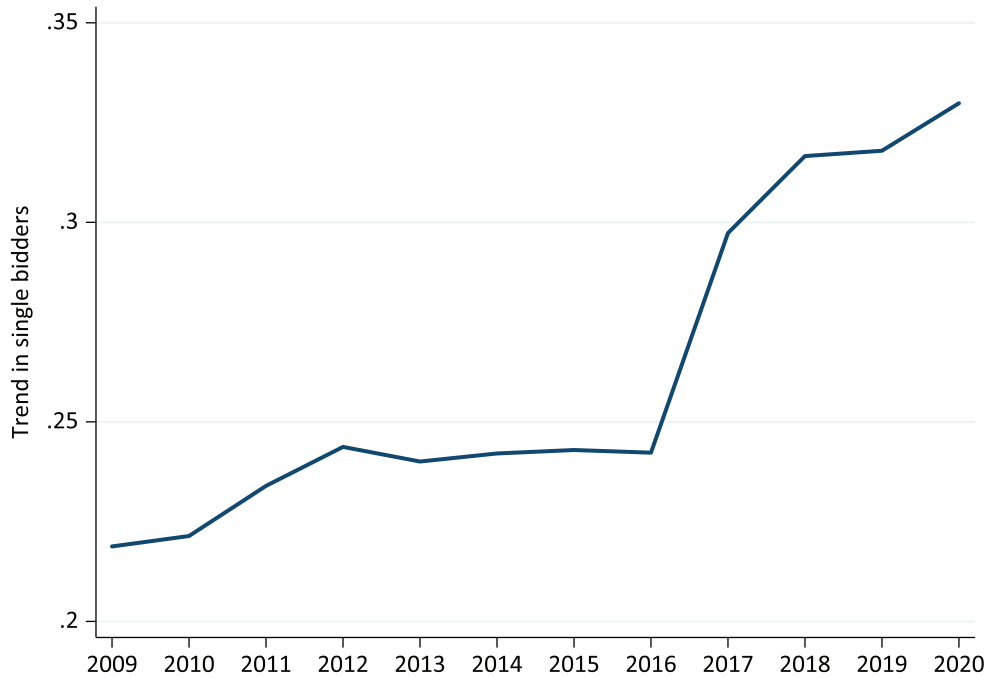

Figure 1. Trend of single bidders as average of all countries within the European Single Market from 2009 to 2020. Note: The TED database includes North Macedonia. Source: Author's own compilation based on the Commission's TED database (TED, 2022).

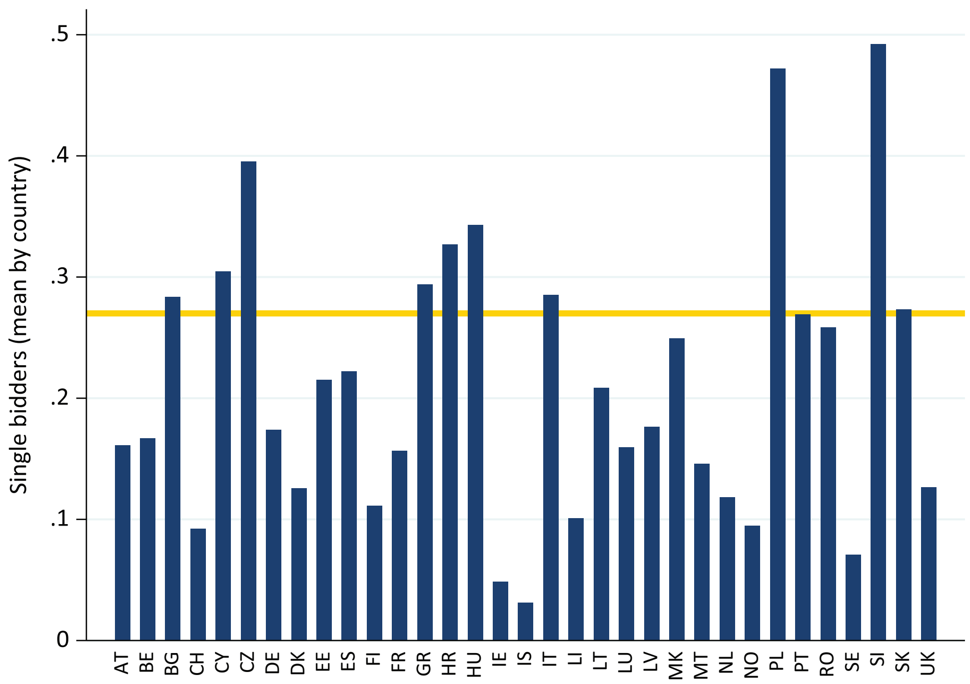

Figure 2. Trend in single bidders by countries within the European Single Market from 2009 to 2020. Source: Author's own compilation based on the Commission's TED database (TED, 2022).

creates a turning point for the legitimacy of EU governance in procurement.

7. Conclusion

This study investigates the extent to which EU policy on public procurement has changed in the current Covid-19 crisis and how these changes affect the procurement outcomes in the member states. Based on institutionalist and EU governance theories, the study contributes three insights to the literature. The first insight is that the Covid-19 crisis created momentum for policy changes in the field of procurement that can be classified as exogenous and where the cause of change emerged in the short term. The new guidelines for member states to procure medical supplies and the jointly conducted procurement launched by the EU are examples of such changes. While these changes represent new policies and policy instruments in the field, it is nevertheless clear that the EU's overall goals in procurement remained the same. The second insight provided by this study is that the pandemic opened up a window of opportunity for supranational actors to serve as policy entrepreneurs and drive the harmonisation of procurement rules forward. The policy changes in procurement were introduced primarily by the Commission, which was capable of enabling increased harmonisation and thus European integration, despite the crisis. Interestingly, we see the same tendency today as the Commission aims to launch joint procurement of gas due to the war in Ukraine. The third insight is that while the changes in procurement have enhanced European integration, their implementation in practice increases the risk of protectionism and political corruption and may therefore undermine the legitimacy of these policies. This is because the acceleration of procurement procedures and the introduction of new practices led to a sharp increase in the number of contracts awarded on the basis of only a single bidder or via direct contracting without any calls for bids. This development demonstrates that if EU policies are swiftly decided upon at the supranational level and need to be swiftly implemented, member states face major difficulties in applying these policies. Ultimately, this reduces the legitimacy of the policies.

Furthermore, the new policies in the field of procurement introduced during the Covid-19 crisis afford member states greater flexibility in implementing them. However, this greater flexibility leads to increasingly differentiated policy implementation. Moreover, this flexibility can be politically used for specific market policies that deviate from EU policies (e.g., protectionism). This development should be the subject of future research as it might lead to a gradual loss of legitimacy for the EU's political system as a whole. For example, while some member states aim to promote environmental standards as proposed by the EU, others may use the inclusion of environmental criteria to favour certain companies and businesses "through the backdoor." This hidden protectionism has the potential to harm the European Single Market as a whole. This would mean that the EU's aims are subverted in practice, thereby incrementally undermining its legitimacy.

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Conflict of Interests

The author declares no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the author (unedited).

References

Agence Europe. (2019a, November 14). *New Commission initiative to facilitate access for EU companies to international public procurement* (Bulletin No. 12368). Europe Daily Bulletin. https://agenceurope.eu/en/bulletin/article/12368/17

Agence Europe. (2019b, December 10). *No agreement in EU Council on public procurement instrument in 2019* (Bulletin No. 12386). Europe Daily Bulletin. https://agenceurope.eu/en/bulletin/article/12386/10

Agence Europe. (2019c, May 30). *Member states confirm their interest in a public procurement instrument* (Bulletin No. 12266). Europe Daily Bulletin. https://agenceurope.eu/en/bulletin/article/12266/25

Agence Europe. (2021, June 3). *EU member states agree on international procurement instrument* (Bulletin No. 12732). Europe Daily Bulletin. https://agenceurope.eu/en/bulletin/article/12732/22

Agence Europe. (2022, April 20). *Poland wants to withdraw from EU's pooled procurement mechanism for Covid-19 vaccines* (Bulletin No. 12934). Europe Daily Bulletin. https://agenceurope.eu/en/bulletin/article/12934/13

Arrowsmith, S. (2005). *The law of public and utilities procurement* (2nd ed.). Sweet & Maxwell.

Arrowsmith, S. (Ed.). (2011). *EU public procurement law: An Introduction*. EU Asia Inter University Network for Teaching and Research in Public Procurement Regulation. https://www.nottingham.ac.uk/pprg/documentsarchive/asialinkmaterials/eupublicprocurementlawintroduction.pdf

Arrowsmith, S., Butler, L. R. A., La Chimia, A., & Yukins, C. (2021). *Public procurement regulation in (a) crisis? Global lessons from the Covid-19 pandemic*. Hart Publishing.

Baumgartner, F. R., & Jones, B. D. (1993). *Agendas and instabilities in American politics*. University of Chicago Press.

Bovis, C. H. (2016). *Research handbook on EU public procurement law*. Edward Elgar.

Bulmer, S., Parker, O., Bache, I., George, S., & Burns, C. (2020). *Politics in the European Union* (5th ed.). Oxford University Press.

Capoccia, G. (2016). Critical junctures. In O. Fioretos, T. G. Falleti, & A. Sheingate (Eds.), *The Oxford handbook of historical institutionalism* (pp. 89–106). Oxford University Press.

Communication from the Commission of 1 April 2020: Guidance from the European Commission on using the public procurement framework in the emergency situation related to the Covid-19 crisis. (2020). *Official Journal of the European Union*, C 108. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:*52020XC0401*(05)&from=EN

Copeland, P., & James, S. (2014). Policy windows, ambiguity and Commission entrepreneurship: Explaining the relaunch of the European Union's economic reform agenda. *Journal of European Public Policy*, *21*(1), 1–19.

de Wilde, P., Leupold, A., & Schmidtke, H. (2016). Introduction: The differentiated politicisation of European governance. *West European Politics*, *39*(1), 3–22.

de Wilde, P., & Lord, C. (2016). Assessing actually-existing trajectories of EU politicisation. *West European Politics*, *39*(1), 145–163.

DiMaggio, P. J., & Powell, W. W. (1991). Introduction. In P. J. DiMaggio & W. W. Powell (Eds.), *The new institutionalism in organizational analysis* (pp. 1–38). University of Chicago Press.

European Commission. (2010). *Communication from the Commission: Europe 2020—A strategy for smart, sustainable and inclusive growth* (COM(2010) 2020). https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF

European Commission. (2012). *Commission staff working document: Annual public procurement implementation review 2012* (SWD(2012) 342). https://data.consilium.europa.eu/doc/document/ST%2015538%202012%20INIT/EN/pdf

European Commission. (2013). *Commission staff working document: Annual public procurement implementation review 2013* (SWD(2014) 262). https://data.consilium.europa.eu/doc/document/ST%2012642%202014%20INIT/EN/pdf

European Commission. (2016, May 26). *May infringements' package: Key decisions* [Press release]. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_1823

European Commission. (2017). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making public procurement work in and for Europe* (COM(2017) 572). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A572%3AFIN

European Commission. (2019a). *Communication from the Commission: Guidance on the participation of third country bidders and goods in the EU procurement market* (C(2019) 5494). https://ec.europa.eu/transparency/documents-register/detail?ref=C(2019)5494&lang=en

European Commission. (2019b, November 27). *November infringements package: Key decisions* [Press release]. https://ec.europa.eu/commission/presscorner/detail/en/INF_19_6304

European Commission. (2020). *Commission decision of 18.6.2020 approving the agreement with member states on procuring Covid-19 vaccines on behalf of the member states and related procedures* (C(2020) 4192). https://ec.europa.eu/info/sites/default/files/decision_approving_the_agreement_with_member_states_on_procuring_covid-19_vaccines_on_behalf_of_the_member_states_and_related_procedures.pdf

European Commission. (2022a). *Internal market, industry, entrepreneurship and SMEs: Public procurement*. https://ec.europa.eu/growth/single-market/public-procurement_en

European Commission. (2022b). *Single market scoreboard: Public procurement*. https://single-market-scoreboard.ec.europa.eu/policy_areas/public-procurement_en

European Parliament. (2020). *Parliamentary questions, 5 March 2020: Answer given by Mr Breton on behalf of the European Commission* (Question P-000287/2020). https://www.europarl.europa.eu/doceo/document/P-9-2020-000287-ASW_EN.html

Falkner, G. (2017). *EU Policies in times of crisis: Mechanisms of change and varieties of outcomes*. Routledge.

Fasone, C. (2013). European economic governance and parliamentary representation: What place for the European Parliament? *European Law Journal*, *20*(2), 164–185.

Fazekas, M., Sberna, S., & Vannucci, A. (2021). The extra-legal governance of corruption: Tracing the organization of corruption in public procurement. *Governance*. Advance online publication. https://doi.org/10.1111/gove.12648

Gerschewski, J. (2021). Explanations of institutional change: Reflecting on a "missing diagonal." *American Political Science Review*, *115*(1), 218–233.

Gordon, H., Rimmer, S., & Arrowsmith, S. (1998). The economic impact of the European Union regime on public procurement: Lessons for the WTO. *The World Economy*, *21*(2), 159–187.

Hall, P. A. (1993). Policy paradigms, social learning, and the state: The case of economic policymaking in Britain. *Comparative Politics*, *25*(3), 275–296.

Howlett, M., & Cashore, B. (2009). The dependent variable problem in the study of policy change: Understanding policy change as a methodological problem. *Journal of Comparative Policy Analysis: Research and Practice*, *11*(1), 33–46.

Jensen, C. S. (2019). Neo-functionalism. In M. Cini & N. P.-S. Borragan (Eds.), *European Union politics* (pp. 55–68). Oxford University Press.

Karlsson, C., Silander, D., & Pircher, B. (2019). *Smart, sustainable and inclusive growth: Political entrepreneurship for a prosperous Europe*. Edward Elgar.

Lenz, T., & Viola, L. A. (2017). Legitimacy and institutional change in international organisations: A cognitive approach. *Review of International Studies*, *43*(5), 939–961.

Mahoney, J., & Thelen, K. (2010). A theory of gradual institutional change. In J. Mahoney & K. Thelen (Eds.), *Explaining institutional change: Ambiguity, agency and power* (pp. 1–27). Cambridge University Press.

Meulenbelt, M. (2016). Protectionism on the rise? Modernization of EU public procurement rules during the economic crisis. In H. Kalimo & M. S. Jansson (Eds.), *EU economic law in a time of crisis* (pp. 57–75). Edward Elgar.

Pierson, P. (1996). The path to European integration: A historical institutionalist analysis. *Comparative Political Studies*, *29*(2), 123–163.

Pircher, B. (2020a). The Council of the EU in times of economic crisis: A policy entrepreneur for the internal market. *Journal of Contemporary European Research*, *16*(1), 65–81.

Pircher, B. (2020b). EU public procurement policy: The economic crisis as trigger for enhanced harmonisation. *Journal of European Integration*, *42*(4), 509–525.

Saurugger, S., & Terpan, F. (2015). Do crises lead to policy change? The multiple streams framework and the European Union's economic governance instruments. *Policy Sciences*, *49*(1), 35–53.

Scharpf, F. W. (2015). After the crash: A perspective on multilevel European democracy. *European Law Journal*, *21*(3), 384–405.

Schimmelfennig, F. (2018). European integration (theory) in times of crisis: A comparison of the euro and Schengen crises. *Journal of European Public Policy*, *25*(7), 969–989.

Schimmelfennig, F., Leuffen, D., & Rittberger, B. (2015). The European Union as a system of differentiated integration: Interdependence, politicization and differentiation. *Journal of European Public Policy*, *22*(6), 764–782.

Schimmelfennig, F., & Winzen, T. (2020). *Ever looser Union? Differentiated European integration*. Oxford University Press.

Schmidt, V. A. (2016). The roots of neo-liberal resilience: Explaining continuity and change in background ideas in Europe's political economy. *The British Journal of Politics and International Relations*, *18*(2), 318–334.

Schmidt, V. A. (2020). Theorizing institutional change and governance in European responses to the Covid-19 pandemic. *Journal of European Integration*, *42*(8), 1177–1193.

Schmidt, V. A. (2021). European emergency politics and the question of legitimacy. *Journal of European Public Policy*, *29*(6), 979–993. https://doi.org/10.1080/13501763.2021.1916061

Schulten, T., Alsos, K., Burgess, P., & Pedersen, K. (2012). *Pay and other social clauses in European public procurement: An overview on regulation and practices with a focus on Denmark, Germany, Norway, Switzerland and the United Kingdom*. European Federation of Public Service Unions. https://www.epsu.org/sites/default/files/article/files/EPSU_Report_final.pdf

Semple, A. (2015). *A practical guide to public procurement*. Oxford University Press.

Streeck, W., & Thelen, K. (2005a). *Beyond continuity: Institutional change in advanced political economies*. Oxford University Press.

Streeck, W., & Thelen, K. (2005b). Introduction: Institutional change in advanced political economies. In W. Streeck & K. Thelen (Eds.), *Beyond continuity: Institutional change in advanced political economies* (pp. 1–39). Oxford University Press.

Tenders Electronic Daily. (2022). *Supplement to the Official Journal of the EU*. https://ted.europa.eu/TED/misc/aboutTed.do

Thomann, E. (2015). Customizing Europe: Transposition as bottom-up implementation. *Journal of European Public Policy*, *22*(10), 1368–1387.

Treaty on European Union, 2008, Consolidated Version, 9.5.2008, C 115/13-45.

Treumer, S., & Comba, M. (2018). *Modernising public procurement: The approach of EU member states*. Edward Elgar.

Turpin, C. (1972). *Government contracts*. Penguin.

Vollaard, H. (2014). Explaining European disintegration. *Journal of Common Market Studies*, *52*(5), 1142–1159.

Vollaard, H. (2018). *European disintegration: A search for explanations*. Palgrave Macmillan.

Webber, D. (2014). How likely is it that the European Union will disintegrate? A critical analysis of competing theoretical perspectives. *European Journal of International Relations*, *20*(2), 341–365.

Weishaar, S. E. (2016). Striking an uneasy balance between competition and market integration: The case of EU public procurement. In N. Philipsen, S. E. Weishaar, & G. Xu (Eds.), *Market integration: The EU experience and implications for regulatory reform in china* (pp. 97–118). Springer.

World Trade Organization. (2017). *Agreement on government procurement*. https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

Zaum, D. (2017). Legitimacy. In J. K. Cogan, I. Hurd, & I. Johnstone (Eds.), *The Oxford handbook of international organizations* (pp. 1107–1125). Oxford University Press.

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Article

"Selective Friendship at the Fund": United States Allies, Labor Conditions, and the International Monetary Fund's Legitimacy

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Abstract

This article discusses the International Monetary Fund's recent effort to garner legitimacy by incorporating the reduction of economic inequality in its lending programs. It argues that the impact of the US as a major shareholder on conditionality and geopolitical considerations beyond objective and measurable economic necessities detract from these efforts to expand legitimacy. Using a panel data analysis of International Monetary Fund programs between 1980 and 2014, the article shows that US-allied left-wing governments receive a larger number of labor conditions in their programs compared to non-allied and right-wing governments. The article argues that this is part of left-wing governments' strategy of maintaining their alliance with the US and demonstrating ideological proximity. In exchange, the US uses its influence to secure fewer conditions in total for its allied governments. This not only shifts the burden of adjustment on labor groups but also harms the Fund's procedural legitimacy, as conditions are not objectively determined. It also has adverse implications for outcome legitimacy by distorting economic policies and outcomes and increasing income inequality.

Keywords

International Monetary Fund; labor conditions; legitimacy; lending programs; United States

Issue

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1. Introduction

The International Monetary Fund (IMF) is one of the most controversial international organizations in the global governance system. Scholars often discuss the IMF's "legitimacy crisis" (Best, 2007; Clift & Robles, 2021; Seabrooke, 2007) and the institution's continuous efforts to reform and address these challenges (Metinsoy, 2019; Momani & Hibben, 2017; Woods, 2006). As part of a recent effort to address rising criticisms and garner legitimacy, the Fund incorporated tackling economic inequality in its lending programs as a "macro-critical issue," i.e., an issue that is critical to macroeconomic stability (Ostry et al., 2016). Scholars agree that this effort has been limited in its success (Best, 2007; Clift & Robles, 2021; Gronau & Schmidtke, 2016; Nunn & White, 2016). They explain this by the Fund's narrowly focused expertise on "classic economics" and its lack of expertise in the field of politics (Best, 2007), the bureaucratic structure of the Fund, and, relatedly, the institutional and ideational setbacks for change (Clift & Robles, 2021; Nunn & White, 2016), as well as fragmented and slow-paced change in Fund policies (Kaya & Reay, 2019). Another group of scholars look at socially, economically, and politically harmful consequences of Fund lending programs such as exacerbating poverty, instilling political instability, and harming economic growth (Abouharb & Cingranelli, 2007; Hartzell et al., 2010; Lang, 2021; Oberdabernig, 2013; Przeworski & Vreeland, 2000), which indirectly diminishes the legitimacy of the Fund's lending programs. Finally, scholars have argued that the influence and the privileged role of powerful states in terms of voting rights at the Fund and less voice for developing countries in comparison harm the Fund's legitimacy (Guastaferro & Moschella, 2012; Seabrooke, 2007; Woods, 2006), In this article, I propose an alternative argument based on geopolitical interests as to why the IMF cannot overcome its legitimacy gap and cannot reduce income inequality in borrowing countries. I argue that US-allied left-wing governments receive more labor conditions compared to non-US allied and right-wing and centrist governments. The argument builds on the US influence on the design of conditionality and its role in securing favorable "deals" for its allies. Scholars have previously considered how an alliance with the US translates into larger loans and fewer conditions for borrowing countries (Copelovitch, 2010; Dreher & Jensen, 2007; Stone, 2008). In this article, I look at how an alliance with the US can result in a higher number of and more stringent labor conditions for left-wing governments. I argue that labor market reform under an IMF program helps these governments preserve their geostrategic alliance with the US and signal their pro-market disposition to international financial markets. In Eastern European borrowers, in addition to this, an alliance with the US coincides with signaling a break with the Soviet past. In exchange, these governments reinforce their alliance with the US and demonstrate that they do not have a "radical" leftist agenda. The alliance may then serve allied governments (in the narrow sense of the government as an institution), for instance, by receiving more aid from the US or general support for their diplomacy and foreign policy goals as well as helping them bypass domestic opposition by shifting the blame onto the IMF. This support, however, comes at the expense of domestic labor groups. In other words, the article brings in a qualification for the earlier studies that an alliance with the US results in more lenient treatment at the Fund: It shows that an alliance with the US does not necessarily result in more favorable outcomes for all domestic groups. This "selective friendship" and shifting the burden onto labor groups not only violates the Fund's claim of assigning conditions based on objective and measurable economic indicators but also makes it serve as a "backdoor" for geostrategic alliances and goals. This is highly damaging for an international organization that claims legitimacy based on its reputation as a technocratic institution.

Finally, I argue that labor conditions in Fund programs are intimately linked to rising inequality in lending programs. As discussed in a recent IMF staff discussion article, labor market flexibility has a considerable influence on increasing income inequality (Dabla-Norris et al., 2015). IMF labor conditions that dismantle income- and job-protection measures in the labor market and bring greater flexibility cause salary increases for a minority of workers, whereas salaries of the majority decrease with the declining security and regulation. Since the majority of the wider public in borrowing countries are wage earners, income inequality substantially increases. This contradicts the Fund's declared policy goals of reducing income inequality in borrowing countries and significantly compromises its outcome legitimacy (i.e., the outcomes of the programs).

In a panel data analysis of the years between 1980 and 2013, I show that left-wing governments allied with the US receive more labor conditions controlling for selection into IMF programs, time trends, labor market indicators such as the level of regulation and flexibility in the labor market, and political indicators such as democratic regimes and elections in a particular year. I look at three separate indicators of labor conditions: total number of labor conditions in a lending program, relative frequency of labor conditions among total conditions (i.e., number of labor conditions divided by the total number of conditions), and the stringency of conditions such as prior actions and performance criteria, fulfilment of which determine whether the country can receive a loan from the Fund. With all three measurements, left-wing governments allied with the US receive a larger number of labor conditions than non-allied and right-wing governments. This shows that governments can pursue their own self-interest using their alliance with the US and the IMF and can shift the burden downward onto society. This, undoubtedly, has a significant adverse impact on the legitimacy of the Fund in the eyes of the wider public.

The rest of the article is organized as follows: The next section offers a survey of the existing studies and points to gaps in and the contribution of this study to the extant literature. Section 3 offers a more detailed theorization of how the alliance with the US translates into more labor conditions despite fewer total conditions in programs and how this affects the Fund's legitimacy. Section 4 provides the empirical evidence for the association between an alliance between the US and the borrowing government, the left-wing ideology of the government, and a greater number of labor conditions in lending programs. The final section summarizes the argument.

2. The International Monetary Fund and Its Legitimacy Crisis

The IMF's continuous "legitimacy crisis" has previously been discussed under three subheadings in the literature with corresponding advice on how to address it. Firstly, the US's privileged role in terms of voting rights at the Fund and G7 countries making up more than 60% of all votes are identified as problematic for the remaining IMF members. Considering that G7 members almost never borrow from the Fund and there are repeat borrowers among developing countries, the lopsided voting structure has been heavily criticized (Guastaferro & Moschella, 2012; Seabrooke, 2007; Woods, 2006). In response, the corresponding legitimation attempt by the IMF consists of revising quotas and giving developing countries a greater voice (Gronau & Schmidtke, 2016). The Fund has, however, gone through multiple rounds of revisions to its voting system without a corresponding increase in its legitimacy (Metinsoy, 2019).

A second factor is the narrowly defined and applied economics expertise at the Fund, usually following the teachings of "classical economics," which may not correspond to the political realities in borrowing countries (Best, 2007; Clift & Robles, 2021; Nunn & White, 2016). Furthermore, the Fund is known to hire from a narrow pool of macroeconomists usually trained in Anglo-Saxon countries (Chwieroth, 2015; Nelson, 2014, 2017). This might also feed into a "narrow" conceptualization of economic problems and solutions to them. As a remedy, Best (2007) calls for greater intellectual pluralism at the Fund and diversity in the recruitment and training of staff members. Recent changes in the Fund's lending arrangements, such as a more sympathetic approach to capital controls and greater space for Keynesian ideas, might signal a change in this regard (Chwieroth, 2014; Clift, 2018; Metinsoy, 2021). Nevertheless, this does not seem to have solved the IMF's legitimacy problems, either. This is not least because the change is fragmented, where ideational shifts in one policy area or Fund department may not spill over to another area to a high degree and existing and new practices co-exist for at least a period of time (Kaya & Reay, 2019). Some scholars have particularly drawn attention to the gap between the rhetoric of change and the continuation of existing practices, which they called "organized hypocrisy" at the Fund, referring to the deliberate discrepancy between rhetoric and practice (Kentikelenis et al., 2016). This gap undoubtedly harms the Fund's legitimacy in the eyes of borrowing governments and their citizens.

Finally, the Fund has been criticized in terms of the consequences of its programs, such as its negative impact on economic growth (Przeworski & Vreeland, 2000), exacerbating inequality (Garuda, 2000; Lang, 2021; Oberdabernig, 2013), lowering labor's income (Vreeland, 2002), diminishing labor rights (Caraway, 2006; Reinsberg et al., 2019), and triggering civil wars (Hartzell et al., 2010) and coups d'état (Casper, 2017). As a response, the Fund has been promoting the idea of "country ownership" (Best, 2007; Seabrooke, 2007) and greater attention to the "political economy" of the borrowing country (author's interview with a senior IMF official, 2021; see also Nunn & White, 2016). This, however, assumes that programs are designed with certain transparency and objectivity and without informal political influence behind closed doors, such as the influence of the US. This article aims to delve deeper into why and how conditionality that leads to adverse economic outcomes, such as rising income inequality despite the declared aim of reducing it, may come about.

The article aims particularly to offer a cross-cutting perspective on the Fund's potential legitimacy deficiency and proposes to unpack the term "borrowing country." While quota reform may grant a greater voice to developing countries, it does not empower labor groups within borrowing countries to the same extent. Governments negotiate the programs at the Fund and can mobilize their alliance with the US to secure favorable deals for their own narrow interests. Scholars have previously demonstrated that the US engages in "informal, backdoor politics" at the Fund (Stone, 2008, p. 595) and that it secures larger loans and more lenient conditionality for its allies (Copelovitch, 2010; Dreher & Jensen, 2007; Dreher et al., 2015; Stone, 2008). Following the recent advancement in IMF studies in terms of unpacking conditionality (Dang & Stone, 2021), we can also look at what types of conditionality (in addition to the total number of conditions) US allies receive. Furthermore, greater attention to a country's political economy or greater intellectual pluralism may not be extensively helpful unless transparency and objectivity are ensured in the design of conditionality. This article looks at how governments, as negotiators of Fund programs, can use their seats at the table to signal their ideological proximity to the US and strengthen their geostrategic alliance with it by pushing for labor market reform under IMF programs. This need to "prove" ideological proximity is particularly strong for left-wing governments, which may be regarded more suspiciously by the US.

The next section discusses in more detail how an alliance with the US for left-wing governments may result in a larger number of labor conditions in IMF lending programs.

3. Governments, the United States Alliance, and the International Monetary Fund as "Scapegoat"

Governments often borrow from the IMF when they face balance-of-payments problems and when they cannot find credit on favorable terms in international private markets (Copelovitch, 2010). They sometimes, however, go to the IMF when they also want to conduct costly reforms at home and lack the power base to execute them (Vreeland, 2006). In such cases, they use the IMF as an external anchor and as a "scapegoat" to bypass domestic opposition and shield themselves from criticism from domestic constituencies (Vreeland, 2006). They then negotiate with the Fund with the purpose of implementing those politically costly reforms at home. Finally, US allies are more likely to borrow from the Fund due to the privileged position of the US simply because their request for loans are more likely to be approved by the Fund (Stone, 2008).

Scholars have previously demonstrated that governments have some influence on the design of conditionality. For instance, powerful groups such as the military might avoid budgetary cuts under IMF programs thanks to their connection to and representation by the government, while other less organized groups such as the education sector or labor groups might suffer from extensive budgetary cuts (Caraway et al., 2012; Nooruddin & Simmons, 2006). Affirming this point, a senior official in the Greek government, who negotiated a program with the IMF in 2012, argues that they had some wiggle room to oppose some conditionality and protect some groups such as the education sector from cuts (author's interview with a senior Greek official, 2014).

We can logically assume that governments might want to hold the discretion of how to distribute the burden with minimum political cost and with the greatest benefits to themselves. Left-wing governments, however, face a dilemma because of split domestic and international costs and benefits. Domestically, they are often elected on a labor-friendly platform, and their mandate is often not to curtail labor rights but to expand them. Therefore, we can assume that labor market reforms are highly costly, especially for left-wing governments. Internationally, their pro-labor left-wing agenda may provoke suspicions in the international market and can risk their geopolitical alliance with the US. They can solve this dilemma by externalizing the blame and "scapegoating" the IMF for labor market reforms in domestic politics. If they can blame the Fund for those reforms, this exonerates them from the burden. Internationally, they can demonstrate to the US and international markets that they do not have a "radical" leftist agenda. To put it differently, they show that they are "good leftists" and ideologically close to the US. For instance, in Brazil in 1999, the left-leaning government received five labor conditions with an above-average alignment score with the US (0.26) and did not receive any labor conditions in 2002 when its alignment score went down (0.18). In Eastern European borrowers of the Fund—such as Romania in 2003, Macedonia in 1997, and Hungary in 1997—labor market reform under IMF programs may also signal a break from the Soviet past. This break with the past coincides with an alliance with the US and a greater number of labor conditions. Hungary is an interesting example with six labor conditions and an alignment score of 0.46 in 1997.

Although perhaps every government may want to hold the ultimate discretion on reforms and have the greatest benefits with the minimum political costs for themselves, they may not always have access to this type of deal. Due to a certain power asymmetry between the Fund and the borrower, borrowers do not have extensive bargaining power. The Fund is the creditor, and the borrower is naturally in need of the loans and hence in a weaker position. One can argue that the Fund can push for its agenda of reducing income inequality despite governments' different priorities and geostrategic calculations. US allies, however, may overcome this type of asymmetry with the Fund thanks to the US privileged position at the IMF. The US maintains an effective veto power since it holds more than 16% of the votes and 85% of the votes are required for qualified majority decisions (Woods, 2006). Furthermore, it commands an informal influence over the institution (Stone, 2008). Hence, the US might help its allied governments to influence the design of conditionality and help governments execute labor market reforms under an IMF program without much cost to themselves.

Indeed, there is a statistically significant positive correlation between voting in line with the US in the UN General Assembly (a proxy for the alliance with the US) and the relative frequency of labor conditions for IMF borrowers (0.61, $p = 0.02$). Data on UN General Assembly voting come from Dreher et al. (2015) and on IMF conditions from Kentikelenis et al. (2016). On the other hand, there is a statistically significant (although substantively small) negative correlation between an alliance with the US and the relative frequency of fiscal conditions in programs (−0.07, $p = 0.03$). Furthermore, delving deeper into the data, we see that US-allied left-wing governments receive more labor conditions and fewer fiscal conditions, while US-allied right-wing governments receive fewer conditions on both accounts. Figure 1 below shows how labor conditions increase for left-wing governments, as the alliance with the US becomes tighter (left panel). It also shows that labor conditions decline for US-allied right-wing governments (right panel).

Furthermore, without the US alliance, there is not a statistically meaningful relationship between labor conditionality and government partisanship. Left-wing governments with a looser alliance with the US receive on

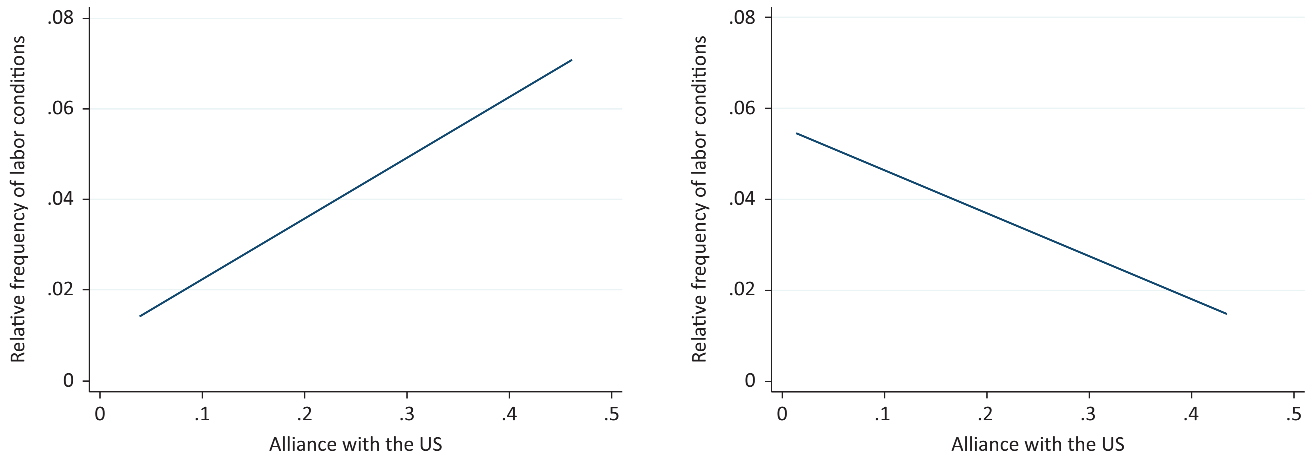

Figure 1. Relative frequency of fiscal and labor conditions for the US allies (left graph: left-wing governments; right graph: right-wing and center governments). Source: Author's own calculations based on Dreher et al. (2015) for "voting in line with the US," Kentikelenis et al. (2016) for the labor conditions, and the Cruz et al. (2018) "Database of Political Institutions (DPI) 2017" for government ideology.

average fewer and less stringent labor conditions. One can argue that, without the need to project ideological proximity to the US, these governments are more likely to protect labor interests at the negotiation table. They, however, receive a greater number of fiscal conditions and a greater number of total conditions, confirming earlier studies that the US intervenes to secure more lenient programs for its allied governments in terms of total number of conditions. In other words, a strategic alliance with the US alters the distribution of conditions and the choice between labor and fiscal conditions for left-wing governments.

An alternative explanation might be that left-wing governments have a short-term electoral strategy: By keeping fiscal conditions to the minimum, governments preserve their ability to govern and distribute strategic resources to their constituencies in order to shield them from the impact of the crisis and shrinking resources. Secondly, via labor conditions, they socialize and disseminate the impact of conditions to all parts of the society and reduce the weight on their electoral constituencies. In other words, they trade labor conditions with fiscal conditions in service of their re-election strategies. However, if this is the case, we should observe a similar calculation for all left-wing governments. In the design of conditionality, we see that, without an alliance with the US, left-wing borrowers of the Fund receive fewer and less stringent labor conditions. In other words, labor conditions might really be the price of the alliance with the US.

Another alternative explanation may be that left-wing governments find it easier than their right-wing counterparts to build a coalition for reform due to general support for pro-market reforms from the right-wing opposition (Beazer & Woo, 2016). Right-wing governments, on the other hand, face fierce opposition from the left-wing parties when they want to initiate reform. This, however, contradicts the fact that non-US-allied left-wing governments receive fewer labor conditions. Furthermore, the theory may be attributing more agency to the opposition than the government itself in policy initiation and implementation. The empirical data seem to show that US-allied left-wing governments are more likely to receive labor market conditions than right-wing and centrist governments.

The IMF's labor conditionality can be highly intrusive, overhauling the labor market regulations. Some common labor conditions consist of dismantling collective labor agreements and replacing them with firm- and individual-level agreements, such as in the Greek and Portuguese programs in 2010 and 2011, respectively (IMF, 2010a, 2011). This naturally diminishes the bargaining power of labor groups and results in a reduction in their income. Conditions can also directly lower the minimum wage and pension rights as in Latvia in 2010 (IMF, 2010b). They can mandate the layoff of public sector workers (Rickard & Caraway, 2019), foster privatizations (Caraway et al., 2012), and lower the wages of public sector workers (IMF, 2010b). Via the "demonstration effect," this reduces wages in the private sector as well (IMF, 2009). Conditions can reduce the severance payment and unemployment benefits and make firing easier in general. The maximum duration of temporary contracts can be extended, and the number of hours one can work on a part-time contract might be prolonged (IMF, 2010a).

Labor conditions in IMF programs often contribute to rising income inequality. Especially dismantling collective bargaining rights results in an increase in the income of wage earners at the top, while those of lower-income groups diminish further (Wallerstein, 1999). With lowered security due to layoffs from the public sector and easier firing conditions in the private sector, workers accept lower wages. Scholars have found that IMF programs in general increase inequality (Forster et al., 2019; Oberdabernig, 2013). Furthermore, they found that this effect is mainly driven by income losses among lower-income groups (Lang, 2021). Labor conditions lower the income of mainly vulnerable groups in society. This squarely contradicts the Fund's declared aim of reducing inequality and diminishes the Fund's legitimacy due to the discrepancy between the rhetoric and policy.

According to the IMF, labor market reforms in its programs are geared towards bringing greater flexibility and efficiency to the labor market (IMF, 2013). They practically, however, reduce protection in the labor market. Considering the negative impact of those measures on the prospective and current income and security of labor groups, they are especially politically costly for left-wing governments to implement. The IMF then becomes a convenient "scapegoat."

Being "scapegoated" in this way has an additional negative effect on the legitimacy of the Fund in two ways. Governments "scapegoat" the IMF using "elite cues." Research shows that negative elite cues regarding international organizations stick more than positive messages, and this holds especially true for organizations such as the IMF, where public knowledge of the organization is limited (Dellmuth & Tallberg, 2021). "Scapegoating" diminishes the basis of the Fund's legitimacy in the public eye. This often translates into large-scale protests and strikes, and the legitimacy of the institution is visibly diminished for future borrowers as well (Abouharb & Cingranelli, 2007; Pastor, 1987). Secondly, "backroom deals" harm the main basis of the IMF's legitimacy, i.e., its claim to non-political, expert knowledge (Best, 2007; Clift & Robles, 2021). Interference of politics such as the alliance with the US and the government partisanship in conditionality significantly damage the Fund's expertise-led legitimacy claims.

The IMF assigning a larger share of labor conditions for US-allied left-wing governments also harms procedural and output legitimacy, as discussed in the introduction of this thematic issue. Procedurally, the IMF is "instrumentalized" by governments, which lack the mandate and power base to implement politically costly reforms. The legitimacy of international organizations is sometimes argued to be granted by the willing participation of governments, who voluntarily sign up for these organizations (Guastaferro & Moschella, 2012). If those governments then use the international organization to circumvent the domestic opposition and shift the burden of adjustment on them in order to preserve their geopolitical alliances, then this naturally harms the procedural legitimacy claims. In terms of outcome legitimacy, rising inequality and diminished security and income for the majority of workers contradict the stated goals of the IMF, i.e., reducing inequality in its program countries. Additionally, it takes the blame for an outcome that a government is not normally elected to implement but can put in place (an extensive labor market reform) thanks to the anchor of the IMF.

The next section provides the empirical support for the theory proposed in this section that US-allied left-wing governments receive a larger number of labor conditions than non-US allies, controlling for preexisting labor market regulations and firing costs and other political and economic variables.

4. Quantitative Evidence: Alliance with the United States, Government Partisanship, and Labor Conditions

The proposed theory in this article predicts that left-wing governments, allied with the US, will receive more labor conditions in their programs. In order to test this theory, I draw on a sample of IMF borrowers between the years 1980 and 2014. The unit of analysis is country-year following earlier studies in the field (Caraway et al., 2012; Copelovitch, 2010; Dreher & Jensen, 2007; Nelson, 2014). I limit the sample to countries that have been under an IMF program for five or more months in a particular year in order to avoid false "zeros" on labor conditionality for non-borrowers (naturally, non-borrower countries do not receive any labor conditions). It can also be argued that some systematic commonalities among IMF borrowers may require them to implement labor conditions. For this reason, in addition to limiting the sample to IMF program countries, I control for selection into IMF programs: 1 indicates if a country has been under an IMF program for five or more months in a given year and 0 indicates otherwise. In the selection, I look at the impact of GDP (economic size), GDP per capita income (relative wealth), GDP growth (economic crisis), current account deficit as a ratio of GDP (balance-of-payment imbalances), and external debt as a ratio of gross national income (GNI). All variables come from the World Bank World Development Indicators data set. Finally, I also control for recidivism since repeat borrowers are more likely to go back to the IMF. I measure recidivism as the average number of programs in the past five years.

Two-stage models for count dependent variables, such as labor conditions in IMF programs that account for sample selection, are relatively new in the literature. For this purpose, I use an R package specifically developed for count data (Wyszynski & Marra, 2018). The model fits a probit selection model in the first stage (the dependent variable is "selection into the IMF") and a negative binomial model in the second stage (the dependent variable is the number of labor conditions). I use a classic Heckman selection model when the relative frequency of labor conditions is the dependent variable (since it is a continuous variable ranging from zero to 0.5).

Data on the main dependent variable—"labor conditions"—come from the Kentikelenis et al.'s (2016) data set on IMF conditions. I measure labor conditionality in three different ways for robustness checks: (a) count of labor conditions in a program, (b) weighted stringency of labor conditions with greater weight assigned to stricter conditions such as prior actions and performance criteria and less weight to structural and indicative benchmarks, and (c) the relative frequency of labor conditions within the total number of conditions (i.e., labor conditions divided by total number of conditions). The third measure is a safeguard in case larger programs also contain a higher number of labor conditions due to the greater adjustment requirement. For the second measure, the performance criteria and prior actions are given higher stringency since their fulfilment is a requirement for the release of the IMF's tranche. Non-fulfilment of a benchmark does not necessarily result in holding up the tranche. Descriptive statistics for all variables in the analysis are in the online Supplementary Material.

Following the earlier robust literature, I proxy the "alliance with the US" with a measure of the UN General Assembly voting (Copelovitch, 2010; Dreher, 2006; Dreher & Jensen, 2007; Dreher et al., 2015; Stone, 2008). US allies follow the US voting patterns in the UN General Assembly (Dreher, 2006). Higher values on the UN voting variable indicate greater alignment of voting between the country and the US and hence a closer alliance between the two. Data come from Dreher et al. (2015). Data on "left-wing governments" come from the Database of Political Institutions (Cruz et al., 2018) and is coded as 1 if the incumbent government is left leaning and 0 for right-wing and center governments. In the analysis, I look at the interaction between the two, that is left-wing incumbent government and the alliance with the US. The list of left-leaning governments, the number of labor conditions, and their alignment score with the US in the UN General Assembly are in the online Supplementary Material.

In the second stage of the analysis, I also control for several political and economic variables that might affect labor conditions. First, preexisting strict regulations in the labor market might prompt a greater number of labor conditions. Conversely, in an already flexible labor market, there may not be a great need for a labor market reform. In order to control for the impact of a "regulated labor market," I add a composite variable based on legal protection of employment and safeguards against overtime work. The measure includes indicators for firing costs, collective agreements, and wage protection, and the data come from the Centre for Business Research's Labor Regulation Index. The variable is lagged for one year in order to exclude the potential impact of the IMF on labor market regulation.

Secondly, in "election" years, governments may be more likely to shy away from labor conditions, and hence we may observe fewer conditions then. Data on elections come from Database of Political Institutions, and 1 indicates that there was an election in a particular year and 0 indicates otherwise. Relatedly, "democracies" may be more representative of and responsive to labor interests and might avoid labor conditions. Data on democracies come from the Polity II project. On a 20-point scale, 0 indicates an authoritarian regime and 20 indicates a democratic regime. Finally, there has been an upward trend in IMF's labor conditions starting from the 1980s until recently (Caraway et al., 2012). In order to capture this trend, I add a "time trend" variable to the analysis. Table 1 below reports the results for selection into IMF programs in the first stage and determinants of labor conditions (for two different measurements), accounting for selection into the IMF, in the second stage.

Table 1. US alliance, left-wing governments, and labor conditions.

Variables		
First stage of analysis	Self-selection into IMF	
GDP per capita	−0.0007**** (0.0000)	
GDP	0.0000**** (0.0000)	
GDP per capita growth	−0.0006**** (0.0000)	
Current account balance	0.0000 (0.0000)	
External debt (% GNI)	0.0000**** (0.0000)	
Recidivism	0.0000 (0.0000)	
Constant	0.0000 (0.0000)	
Number of observations	490	
Second stage of analysis	Labor conditions (count)	Labor conditions (weighted)
Left-wing government	−0.3369**** (0.0347)	−0.3659** (0.1540)
US Ally	0.9378**** (0.0869)	0.9679*** (0.2980)
Left-wing government × US ally	1.7575**** (0.1017)	1.7852**** (0.4835)
Regulated labor market (lag)	−0.0233** (0.0109)	−0.0174 (0.0566)
Democracy	0.0178*** (0.0059)	0.0179 (0.0172)
Election year	−0.1236**** (0.0102)	−0.1236* (0.0700)
Time trend	0.0388**** (0.0007)	0.0363**** (0.0046)
Constant	−0.8633 (0.1249)	0.3299** (0.1377)
Number of observations	240	240

Notes: Two-stage (probit in the selection into IMF and negative binomial for labor conditions) model; robust standard errors in parentheses; **** $p < 0.001$, *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

The selection into IMF programs seems to follow the pattern identified by earlier studies. Countries undergoing economic difficulties, such as negative GDP growth, and poorer countries with lower GDP per capita and rising external debt as a proportion of GNI are more likely to borrow from the Fund. Similarly, repeat borrowers go back to the Fund. Countries with larger economies, measured by GDP, are more likely to borrow from the Fund but the substantive impact is very small. A current account deficit, on the other hand, does not seem to have a statistically significant effect.

The results also show that left-wing governments, when the alignment with the US is zero, receive fewer labor conditions. When the left-wing government is zero (i.e., when the government is right-leaning or centrist), increasing US alignment results in a greater number of labor conditions. Furthermore, as the interaction term shows, an increasing alignment with the US for left-wing governments increases labor conditions both as a count (Model 1) and in terms of strictness of labor conditions (Model 2). Conversely, right-wing governments and non-US allies comparatively are less likely to receive labor conditions. A two-unit increase in the US alliance variable results in almost three and a half extra labor conditions for left-wing governments. Furthermore, conditionality becomes stricter for US-allied left-wing governments, such as receiving more performance criteria and prior actions in their programs. The interaction term is statistically very significant for both models.

In addition, as stipulated above, elections reduce labor conditions, all else being equal. Governments probably fear the negative consequences of labor conditions in election years. Interestingly, democracies receive more labor conditions. This might be because the measure captures some of the effects of the alliance with the US as democratic governments have been more likely to be the US allies since the Cold War period. The time trend captures the increasing number of labor conditions in IMF programs throughout the years. Finally, regulated labor markets receive fewer labor conditions, while, paradoxically, more flexible labor markets are more likely to receive conditions. In regulated labor markets, labor groups may be powerful and block flexibility measures and IMF labor conditions. This seems to provide additional support for the theory that conditionality is not purely determined based on objective economic conditions. Results for the Heckman selection model are in the online Supplementary Material.

4.1. Robustness Checks

In order to check the robustness of results, I fit several different regression models. I particularly look at the results with frequently used modelling of negative binomial regression with robust standard errors clustered across countries (Caraway et al., 2012; Model 1 in Table 2), negative binomial regression for panel data with fixed effects (Model 2 in Table 2), and ordinary least

Table 2. Negative binomial and Ordinary Least Square (OLS) regression for panel data.

Variables	(1) Labor conditions	(2) Labor conditions	(3) Relative frequency of labor conditions
US ally	1.821	1.283	0.0118
	(1.894)	(1.748)	(0.0525)
Left-wing government	−1.064	−1.338**	−0.0546***
	(0.759)	(0.569)	(0.0160)
Left-wing government × US ally	5.035**	5.746***	0.260***
	(2.423)	(1.860)	(0.0601)
Regulated labor market (lagged)	−0.146	−0.104	−0.00274
	(0.148)	(0.163)	(0.00607)
Election	−0.110	−0.0816	0.000665
	(0.123)	(0.153)	(0.00427)
Democracy	−0.00940	0.0854**	0.00161
	(0.0288)	(0.0382)	(0.00112)
Time trend	0.107***	0.0640***	0.000815
	(0.0262)	(0.0214)	(0.000561)
Constant	−1.229	−1.930*	0.00580
	(1.092)	(1.119)	(0.0381)
Observations	369	306	336
R-squared			0.119
Number of countries		36	49

Notes: (1) Negative binomial regression with robust standard errors clustered across countries; (2) negative binomial regression for panel data with fixed effects; (3) OLS regression for panel data with fixed effects; robust standard errors in parentheses; *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

square regression for panel data again with fixed effects (Model 3 in Table 2). Fixed effects in the models control for heterogeneity of countries in the sample. Statistically significant results in these models yield strong support for the proposed theory. Table 2 reports the results.

All three models in Table 2 show that the interaction term between a left-wing government and the alliance with the US remains significant. When the incumbent government is a left-wing one, one unit increase in the voting alignment with the US increases the likelihood of receiving labor conditions approximately by 48%, ceteris paribus. When the alliance with the US is zero, i.e., when there is a complete divergence between the US and the given country, then having a left-wing incumbent government would reduce the likelihood of receiving labor conditions by 31%. This confirms the theoretical assertion that governments allied with the US can receive "backroom deals." Furthermore, all models show that left-wing governments receive fewer labor conditions and a smaller share of labor conditions in the total number of conditions when the alignment with the US is zero.

In addition to those robustness checks, I also run a placebo test investigating if the impact of the independent variable is due to a "placebo effect" and the model merely predicts the number of conditions in programs. Table 3 reports the results, where the total number of conditions is the dependent variable.

Table 3 shows that the impact of the interaction term between left-wing government and alliance with the US on labor conditions is not due to placebo effects. They do not influence the total number of conditions in the programs. Neither of the left-wing or US alliance variables reaches statistical significance.

5. Conclusion

This article has discussed the IMF's efforts to garner greater legitimacy by incorporating issue areas such as reducing inequality in its lending programs. Scholars have previously argued that the bureaucratic culture of the Fund, its narrow economic expertise, and lack of political-economic understanding of local conditions in borrowing countries explain its limited success in this regard. This article aimed to bring an additional perspective by looking at the role of the alliance with the US. The US occupies a privileged position at the Fund and can affect lending decisions as well as the design of programs. It can secure favorable terms for its allies at the Fund. The article showed the evidence that indeed the US provides more lenient conditions for its allied governments while helping to shift the burden of adjustment onto labor groups. I argued that the impact is especially prevalent for left-wing governments, which would face high political costs if they launched a labor market reform on their own. Left-wing incumbent governments signal their ideological proximity to the US by launching labor market reform under an IMF program, strengthening their geostrategic alliance with the greatest stakeholder at the Fund while "scapegoating" the IMF in the process in order to avoid political costs associated with labor market reform. The article contributes to the earlier studies that demonstrated that the US allies receive more lenient terms from the Fund. It argued that

Table 3. Placebo test with the total number of conditions.

Variables	Total number of conditions
US ally	1.236 (0.838)
Left-wing government	−0.235 (0.276)
Left-wing government × US ally	0.968 (1.065)
Regulated labor market (lag)	−0.144** (0.0660)
Election	−0.0909 (0.0857)
Democracy	0.0475*** (0.0162)
Time trend	0.0151 (0.00989)
Constant	0.148 (0.481)
Observations	364
Number of countries	48

Notes: Negative binomial regression for panel data with fixed effects; robust standard errors in parentheses; *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

while governments as institutions might benefit from the "selective friendship" of the US, labor groups may not.

These findings have significant implications for the IMF's legitimacy. Procedurally, the Fund assigning more conditions to allied left-wing governments not only allows governments and international powers such as the US to instrumentalize the IMF, but it also provides a "false target" for domestic audiences, i.e., the IMF rather than the government. In terms of outcomes, it exacerbates inequality in domestic politics and potentially reduces the success of IMF's programs. Greater transparency in the design of programs and autonomy for the IMF as an institution from its principals, and especially from the US, might help improve the institution's legitimacy. Scholars can study if the Fund takes "real" steps towards reducing economic inequality in borrowing countries in the future, drawing on the findings of this article.

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Conflict of Interests

The author declares no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the author (unedited).

References

Abouharb, M. R., & Cingranelli, D. (2007). *Human rights and structural adjustment*. Cambridge University Press.

Beazer, Q. H., & Woo, B. (2016). IMF conditionality, government partisanship, and the progress of economic reforms. *American Journal of Political Science*, *60*(2), 304–321.

Best, J. (2007). Legitimacy dilemmas: The IMF's pursuit of country ownership. *Third World Quarterly*, *28*(3), 469–488. https://doi.org/10.1080/01436590701192231

Caraway, T. (2006). Freedom of association: Battering ram or trojan horse? *Review of International Political Economy*, *13*(2), 210–232. https://doi.org/10.1080/09692290600625462

Caraway, T. L., Rickard, S. J., & Anner, M. S. (2012). International negotiations and domestic politics: The case of IMF labor market conditionality. *International Organization*, *66*(1), 27–61.

Casper, B. A. (2017). IMF programs and the risk of a coup d'état. *Journal of Conflict Resolution*, *61*(5), 964–996. https://doi.org/10.1177/0022002715600759

Chwieroth, J. M. (2014). Controlling capital: The International Monetary Fund and transformative incremental change from within international organisations. *New Political Economy*, *19*(3), 445–469. https://doi.org/10.1080/13563467.2013.796451

Chwieroth, J. M. (2015). Professional ties that bind: How normative orientations shape IMF conditionality. *Review of International Political Economy*, *22*(4), 757–787. https://doi.org/10.1080/09692290.2014.898214

Clift, B. (2018). *The IMF and the politics of austerity in the wake of the global financial crisis*. Oxford University Press.

Clift, B., & Robles, T.-A. (2021). The IMF, tackling inequality, and post-neoliberal "reglobalization": The paradoxes of political legitimation within economistic parameters. *Globalizations*, *18*(1), 39–54. https://doi.org/10.1080/14747731.2020.1774325

Copelovitch, M. S. (2010). *The International Monetary Fund in the global economy: Banks, bonds, and bailouts*. Cambridge University Press.

Cruz, C., Keefer, P., & Scartascini, C. (2018). *Database of political institutions 2017* [Data set]. Inter-American Development Bank. https://mydata.iadb.org/Reform-Modernization-of-the-State/Database-of-Political-Institutions-2017/938i-s2bw

Dabla-Norris, E., Kochhar, K., Suphaphiphat, N., Ricka, F., & Tsounta, E. (2015). *Causes and consequences of income inequality: A global perspective* (Staff Discussion Note No. SDN/15/13). https://doi.org/10.5089/9781513555188.006

Dang, T. A., & Stone, R. W. (2021). Multinational banks and IMF conditionality. *International Studies Quarterly*, *65*(2), 375–386. https://doi.org/10.1093/isq/sqab010

Dellmuth, L. M., & Tallberg, J. (2021). Elite communication and the popular legitimacy of international organizations. *British Journal of Political Science*, *51*(3), 1292–1313. https://doi.org/10.1017/S0007123419000620

Dreher, A. (2006). IMF and economic growth: The effects of programs, loans, and compliance with conditionality. *World Development*, *34*(5), 769–788. https://doi.org/10.1016/j.worlddev.2005.11.002

Dreher, A., & Jensen, N. M. (2007). Independent actor or agent? An empirical analysis of the impact of U.S. interests on International Monetary Fund conditions. *The Journal of Law and Economics*, *50*(1), 105–124. https://doi.org/10.1086/508311

Dreher, A., Sturm, J.-E., & Vreeland, J. R. (2015). Politics and IMF conditionality. *Journal of Conflict Resolution*, *59*(1), 120–148. https://doi.org/10.1177/0022002713499723

Forster, T., Kentikelenis, A. E., Reinsberg, B., Stubbs, T. H., & King, L. P. (2019). How structural adjustment programs affect inequality: A disaggregated analysis of IMF conditionality, 1980–2014. *Social Science Research*, *80*, 83–113. https://doi.org/10.1016/j.ssresearch.2019.01.001

Garuda, G. (2000). The distributional effects of IMF programs: A cross-country analysis. *World Development*, *28*(6), 1031–1051. https://doi.org/10.1016/s0305-750x(00)00002-4

Gronau, J., & Schmidtke, H. (2016). The quest for legitimacy in world politics—International institutions' legitimation strategies. *Review of International Studies*, *42*(3), 535–557. https://doi.org/10.1017/S0260210515000492

Guastaferro, B., & Moschella, M. (2012). The EU, the IMF, and the representative turn: Addressing the challenge of legitimacy. *Swiss Political Science Review*, *18*(2), 199–219. https://doi.org/10.1111/j.1662-6370.2012.02067.x

Hartzell, C. A., Hoddie, M., & Bauer, M. (2010). Economic liberalization via IMF structural adjustment: Sowing the seeds of civil war? *International Organization*, *64*(2), 339–356.

International Monetary Fund. (2009). *Latvia: Letter of intent*. https://www.imf.org/external/np/loi/2009/lva/072709.pdf

International Monetary Fund. (2010a). *Greece: Letter of intent*. http://www.imf.org/external/np/loi/2010/grc/080610.pdf

International Monetary Fund. (2010b). *Latvia: 2010 article IV consultation*. https://www.imf.org/external/pubs/ft/scr/2010/cr10356.pdf

International Monetary Fund. (2011). *Portugal: Letter of intent*. http://www.imf.org/external/np/loi/2011/prt/051711.pdf

International Monetary Fund. (2013). *The IMF's advice on labor market issues*. https://www.imf.org/external/np/exr/facts/labor.htm

Kaya, A., & Reay, M. (2019). How did the Washington consensus move within the IMF? Fragmented change from the 1980s to the aftermath of the 2008 crisis. *Review of International Political Economy*, *26*(3), 384–409. https://doi.org/10.1080/09692290.2018.1511447

Kentikelenis, A. E., Stubbs, T. H., & King, L. P. (2016). IMF conditionality and development policy space, 1985–2014. *Review of International Political Economy*, *23*(4), 543–582. https://doi.org/10.1080/09692290.2016.1174953

Lang, V. (2021). The economics of the democratic deficit: The effect of IMF programs on inequality. *The Review of International Organizations*, *16*(3), 599–623. https://doi.org/10.1007/s11558-020-09405-x

Metinsoy, S. (2019). Unending reform attempts at the IMF: Organized hypocrisy or bricolage. *E-International Relations*. https://www.e-ir.info/2019/03/19/unending-reform-attempts-at-the-imf-organised-hypocrisy-or-bricolage

Metinsoy, S. (2021). A Keynesian revolution or austerity? The IMF and the Covid-19 crisis. *Global Perspectives*, *2*(1), Article 24185.

Momani, B., & Hibben, M. R. (2017). *What's wrong with the IMF and how to fix it*. Wiley.

Nelson, S. C. (2014). Playing favorites: How shared beliefs shape the IMF's lending decisions. *International Organization*, *68*(2), 297–328.

Nelson, S. C. (2017). *The currency of confidence: How economic beliefs shape the IMF's relationship with its borrowers*. Cornell University Press.

Nooruddin, I., & Simmons, J. (2006). The politics of hard choices: IMF programs and government spending. *International Organization*, *60*(4), 1001–1033.

Nunn, A., & White, P. (2016). The IMF and a new global politics of inequality? *Journal of Australian Political Economy*, *78*, 186–231.

Oberdabernig, D. A. (2013). Revisiting the Effects of IMF Programs on Poverty and Inequality. *World Development*, *46*, 113–142. https://doi.org/10.1016/j.worlddev.2013.01.033

Ostry, J. D., Loungani, P., & Furceri, D. (2016). Neoliberalism: Oversold? *Finance & Development*, *53*(2), 38–41. https://www.imf.org/external/pubs/ft/fandd/2016/06/ostry.htm

Pastor, M. (1987). The effects of IMF programs in the Third World: Debate and evidence from Latin America. *World Development*, *15*(2), 249–262. https://doi.org/10.1016/0305-750X(87)90080-5

Przeworski, A., & Vreeland, J. R. (2000). The effect of IMF programs on economic growth. *Journal of Development Economics*, *62*(2), 385–421. https://doi.org/10.1016/S0304-*3878*(00)00090-0

Reinsberg, B., Stubbs, T., Kentikelenis, A., & King, L. (2019). The political economy of labor market deregulation during IMF interventions. *International Interactions*, *45*(3), 532–559. https://doi.org/10.1080/03050629.2019.1582531

Rickard, S. J., & Caraway, T. L. (2019). International demands for austerity: Examining the impact of the IMF on the public sector. *The Review of International Organizations*, *14*(1), 35–57. https://doi.org/10.1007/s11558-017-9295-y

Seabrooke, L. (2007). Legitimacy gaps in the world economy: Explaining the sources of the IMF's legitimacy crisis. *International Politics*, *44*(2/3), 250–268. https://doi.org/10.1057/palgrave.ip. 8800187

Stone, R. W. (2008). The scope of IMF conditionality. *International Organization*, *62*(4), 589–620. https://doi.org/10.1017/S0020818308080211

Vreeland, J. R. (2002). The effect of IMF programs on labor. *World Development*, *30*(1), 121–139. https://doi.org/10.1016/s0305-750x(01)00101-2

Vreeland, J. R. (2006). *The International Monetary Fund (IMF): Politics of conditional lending*. Routledge.

Wallerstein, M. (1999). Wage-setting institutions and pay inequality in advanced industrial societies. *American Journal of Political Science*, *43*(3), 649–680.

Woods, N. (2006). *The globalizers: The IMF, the World*

Bank, and their borrowers. Cornell University Press.
Wyszynski, K., & Marra, G. (2018). Sample selection models for count data in R. *Computational Statistics*, *33*(3), 1385–1412. https://doi.org/10.1007/s00180-017-0762-y

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Article

Building Legitimacy in an Era of Polycentric Trade: The Case of Transnational Sustainability Governance

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Abstract
Increasing multi-polarity within global politics is understood to be a key contributor to the current legitimacy crisis facing global governance organisations. International relations scholars studying this crisis recognise that a prominent strategy to confront "Northern" dominance within this arena is through the construction of alternative governance institutions. Yet while the de-legitimation of long-established international organisations is widely discussed, there is less focused attention on how alternative institutions seek to gain legitimacy, particularly when they advance in fields where both "Northern" and "Southern" interests matter and beliefs about what constitutes proper governance may differ. This article analyses the field of transnational economic governance where the de-legitimation of pre-existing Northern-oriented governance takes the shape of new initiatives backed by Southern actors. Specifically, we focus on transnational sustainability standards governing trade and production in the global economy. This global governance arena has been transformed by the increasingly polycentric nature of global trade, in which producers governed by sustainability standards cater to rapidly expanding markets in the Global South as well as markets in the Global North. As markets have expanded in emerging economies, transnational sustainability standards must increasingly navigate and respond to actors and interests within different geographies in order to gain and establish legitimacy. The recent development of Southern-oriented sustainability standards (as opposed to established Northern-led standards) reflects the existence of diverging perspectives on the appropriateness of established rules and procedures when it comes to the regulation of trade and production. These standards are seen as partially challenging established standards but may likely seek to establish legitimacy within the wider transnational field of sustainability governance. This article examines the case of a recently established India-based sustainability standard known as Trustea to illustrate how various actors managed design and policy dilemmas to reconcile the preferences and beliefs of various audiences. The case illustrates the significance of both "Northern" and "Southern" audiences to Trustea's legitimacy-seeking strategies in the context of broader political contestations regarding how production should be governed in relation to sustainable practices.

Keywords
governance; legitimacy; polycentric trade; production; sustainability; tea; transnational standards; Trustea

Issue
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1. Introduction

This article contributes to this thematic issue's aim to analyse how legitimacy questions affect international economic arrangements and if and how these may lead to institutional change (de Deugd & van Roozendaal, 2022). Our starting point is that increasing multi-polarity within global politics and evidence of Southern actors challenging Northern dominance within international governance may lead to a legitimacy crisis within established global governance arrangements (Zarakol, 2019). Yet while de-legitimation of long-existing governance arrangements is widely discussed, less attention is paid to how new "alternative" institutions seek to gain legitimacy, particularly if they advance in fields where both "Northern" and "Southern" interests matter and beliefs about what constitutes proper governance vary. Like the other contributions to this thematic issue, we, therefore, present a study about legitimation strategies in the context of political contestation, albeit with a focus on newly emerging institutions seeking to gain legitimacy, rather than existing institutions being challenged (cf. Bair & Palpacuer, 2015).

Our empirical focus is on the governance of sustainability challenges through transnational standards. Such standards have played a dominant role in governing producers in the Global South who supply goods and services to the Global North. These standards have overwhelmingly been shaped by Northern actors and have typically developed through multi-stakeholder initiatives (MSIs), within which corporates and NGOs co-develop codes of conduct to govern global value chains (Fransen & Kolk, 2007). Yet, as markets expand outside of advanced economies, established transnational sustainability standards and their sponsors in the Global North must arguably seek support from state and non-state actors located within different geographies and end markets to maintain their relevance as international organisations and to expand the orbit of their influence from Northern-oriented to Southern-oriented value chains. Legitimating audiences within these emerging economies may have different perspectives on the appropriateness of established rules and procedures and the output of governance, leading to uncertainty over the longevity of these standards in an era of polycentric trade.

Indeed, evidence of different perspectives is already present through the development of alternative sustainability standards altogether within the Global South representing a fascinating case study of the evolution of global governance in the early decades of the 21st century. The emergence of new "Southern" MSIs backed by Southern actors arguably has the potential to lead to the de-legitimation of Northern-oriented standards, contributing to a wider legitimacy "crisis" driven by broader shifts in the global economic balance of power between Northern and Southern regions of the world economy. Whilst the growing literature on these new Southern MSIs argues that their development is primarily driven by Southern actors, the wider transnational governance arena is complicated by the polycentric nature of trade and production, wherein producers are selling to domestic, regional, and transnational markets. Polycentricity gives rise to the possibility of intersecting interests and tensions between Northern and Southern actors seeking to dominate the governance of sustainability standards within this global standard-setting arena. Political contestation, therefore, becomes a distinct possibility as Southern sustainability standards emerge in a crowded arena of established transnational standards. Within this field, processes of convergence and divergence are possible as diverging interests seek to influence the development of Southern-oriented MSIs, in which Northern as well as Southern actors are capable of shaping governance arrangements.

This article explores these complex dynamics through a case study of an India-based sustainability standard called Trustea, which regulates social and environmental aspects of domestic tea production. Trustea was designed to move away from a Northern-dominated governance model, and yet the complexity of trade and production in an increasingly multi-polar world meant that its development was partially shaped by actors with linkages to Northern tea markets in spite of striving to better incorporate the needs of local Southern audiences (as compared to established transnational sustainability standards). This article highlights the ensuing struggles which emerged during the course of Trustea's development in line with the thematic issue's commitments (de Deugd & van Roozendaal, 2022) by focusing on how various actors perceived the legitimacy of Trustea through different lenses and how Trustea as a new, legitimacy-seeking institution responded to this. We focus on the well-established categories of input legitimacy (who governs?), output legitimacy (governance for whom?), and discursive legitimacy (how do actors constitute legitimate governance?) in relation to this case of a Southern-oriented but not entirely Southern-led sustainability standard.

The next section of this article will discuss our contribution to the literature on legitimation and our approach to the study. Next, we discuss the methodology. After this, we introduce our case, followed by the results of our analysis of legitimation activities. A final section presents the conclusions.

2. Global Governance, Legitimacy, and Polycentric Trade

The economic performance of Southern states has inspired international relations scholars to rethink whether global economic governance should more properly reflect current political-economic realities, leading to a questioning of decision-making procedures, policies, and discourses that appear overly focused on perspectives and interests from "the Global North" (Efstathopoulos, 2021). This line of thinking emerges at a time when Southern actors are increasingly challenging established international economic institutions such as the World Trade Organisation and the International Monetary Fund, giving further credence to such efforts (Zarakol, 2019). Moreover, we are simultaneously witnessing the development of alternative global governance arrangements, which by design aim to reflect the interests and perspectives of actors from Southern economies (cf. Chin, 2014).

In line with this thematic issue's aims, we study the evolution of a particular sub-set of global governance, focused on transnational standards which set norms in relation to the governance of global trade and production. Transnational standards governing sustainability challenges have become a central governance tool under globalisation. Increasingly, these standards are governed through MSIs in which a variety of different actors (such as corporations and NGOs) design and implement codes of conduct to govern producers embedded within global value chains (Fransen, 2012). The legitimacy of these institutions depends on conformation with established social norms, values, and expectations (Palazzo & Scherer, 2006) which, in this arena, are largely centred upon the degree to which such standards are inclusive of diverse actors and interests. These norms have been established over time as corporations in the Global North have been increasingly pushed to develop accountable governance programmes to address exploitation within their value chains (Sasser et al., 2006).

Yet, this field of global economic governance is also dynamic: Many new governing entities emerge and governance arrangements adjust and adapt quickly to expectations from their audiences (Abbott et al., 2016). As such, legitimation activities in this field are also often understood to be politically contested: Different actors and interests, both governmental and non-governmental, profit and non-profit, build MSIs and engage in MSI governance to pursue varying interests. Those interests may compete with each other or advance specific versions of the good life that may be in tension with one another (Bair & Palpacuer, 2015; Bernstein & Cashore, 2007; Fransen, 2012; Loconto & Fouilleux, 2014). This of course, in turn, affects the overall legitimacy of particular MSIs and programmes.

As discussed in the thematic issue's introduction, we think of global governance arrangements (such as transnational standards) as able to function and survive in this arena of contestation if considered legitimate by an audience of possible rule-takers and their constituents or stakeholders. To gain and maintain such legitimacy, organisations will seek to appeal to such audiences in various ways. International relations, broader political science, and sociological research offer a wide variety of ways to categorise such legitimation activities (Bäckstrand & Söderbaum, 2018; Cashore, 2002; Suchman, 1995; Zaum, 2013) but, as a minimum, they currently converge upon three important categories. Without claiming to advance the field by focusing on these three categories, we describe them here as: (a) efforts to design internal decision-making of organisations in fair ways, most significantly aiming to offer various parties influence on policies (*input legitimacy*); (b) efforts to produce effective policies and *policy outputs*, appreciated by audiences; and (c) *discursive activities* seeking to shed a favourable light on policies and the organisation at large and constituting inter-subjective understandings of what is considered to be legitimate governance.

MSIs designed in the North are frequently criticised for failing to include Southern stakeholders or failing to take into account Southern perspectives on what is sustainable, socially just, and fair (Otieno & Knorringa, 2012). This reflects the reality of global trade flows throughout the majority of the past half-century, which has been concentrated within and across the three regions of North America, Europe, and East Asia. Presumably, governance institutions shaping these trade relations would asymmetrically seek legitimacy, taking into account perspectives of what is proper governance from actors inside the triad, relative to those actors outside it. Institutional design, policies and outputs, and organisational and policy discourse are likely to be more attuned to American, European, and East Asian perspectives, reflecting the interests of a Northern audience.

Whilst most MSIs govern goods and services consumed in the North, the global economy is increasingly shaped by polycentric trade and production flows. As a result of rapid economic development in the South, most notably in the "rising powers" (Nadvi, 2014), Northern markets will soon constitute a smaller fraction of total global consumer demand as a global middle class expands within emerging economies. The concept of polycentric trade, stemming from development studies, complements international relations' perspective on multipolar political-economic orders. It illuminates how domestic, regional, and global flows in the world economy interact and intersect. In particular, it shows how production sites that are the targets for transnational sustainability governance may increasingly cater to domestic and regional as well as transnational markets simultaneously.

For established MSIs, the expansion of Southern-oriented consumption and the broadening of producer's trade portfolios beyond Northern market buyers presents a dilemma, given their historical focus on catering to Northern interests, values, and norms. As the world order becomes ever-more characterised by polycentric trade patterns, these institutions must decide how best to adapt and may choose to consider the interests of Southern as well as Northern audiences. However, it is not only a question of how established MSIs respond to these global shifts. There is evidence of new alternative MSIs governing labour and the environment being established by Southern actors in numerous sectors (Langford et al., 2022; Schouten & Bitzer, 2015). Their emergence raises questions regarding how these institutions seek legitimacy and whether they align with or challenge dominant transnational standards. Moreover, is it fitting or appropriate to assume that the interests of Southern and Northern actors do in fact differ, or that institution-building efforts can be separated into those of Northern versus Southern agendas?

These questions are vital for understanding (a) how standards develop in a Southern (as opposed to Northern) context, (b) who shapes these standards, and (c) which audiences are key to their development as legitimate institutions. If global governance increasingly addresses *polycentric* trade patterns, as Horner and Nadvi (2018) claim, then it is likely that powers from outside the triad will be afforded a more powerful role in shaping the legitimacy of particular economic governance arrangements, and these arrangements may also be based upon different norms surrounding what are appropriate forms of governance. This gives rise to two *empirical* questions which form the central focus of this article: To what extent do the perceptions of actors from different geographic positions diverge or converge on the question of what constitutes legitimate economic governance? And, if perceptions of what constitutes legitimate governance do indeed differ within and outside the triad, how do governors of global governance arrangements go about managing such differences?

This article begins with the assumption that what can be considered "proper" governance may indeed vary within an increasingly polycentric world economy. This means that for institutions that govern polycentric trade flows, maintaining legitimacy becomes a careful balancing act in which multiple audiences at different scales and from different geographies may remain relevant to its overall legitimation. Where divergence in perspectives on what is considered "legitimate governance" are not reconcilable in relation to particular decision-making, policy, or discursive compromise at the level of the focal governance organisation, struggles ensue and tensions arise within such transnational governance arrangements. By examining these processes in relation to sustainability standards, we build on evolving approaches of legitimacy analysis in both intergovernmental and transnational governance (cf. Tallberg & Zürn, 2019). Our approach advances the sub-field of transnational sustainability governance studies because such studies have not yet taken more significant stock of the implications of polycentric trade for legitimation politics within newly emerging governance arrangements (cf. Bitzer & Marazzi, 2021).

We know from previous literature in transnational standard-setting that input legitimacy has been a central concern in awarding or rejecting support to standards by particular societal stakeholders (Fransen, 2012) and that this has informed important contestation among businesses and NGOs, as well as among various standard initiatives. It has also received increased attention in studies of Southern standards (Bitzer & Marazzi, 2021), although these studies scarcely deal with the politics of legitimation that underlie institutional design decisions made. Similarly, output legitimacy in terms of policies produced by MSIs also receives significant attention as it describes the activities and priorities of these organisations, albeit with more attention for the legitimacy aspects of these in studies that do not deal with Southern standards (cf. Loconto & Fouilleux, 2014). Discursive legitimacy, finally, is a concept less familiar for most scholars of transnational sustainability governance, although inter-subjective understandings shaping governance do figure in some of the modern classics on transnational standards (cf. Bernstein & Cashore, 2007). Again, we have yet to learn more about how discourse shapes legitimation in the context of emerging Southern standards.

3. Methods

This article follows a case study design based on qualitative research methods (Yin, 2009). Whilst transnational sustainability standards have been a focal point of study, the case study of Trustea as Southern-oriented sustainability represents one of a handful of new standards developed to govern production in domestic and regional value chains in the Global South. As such, Trustea is a fitting empirical example of how Southern standards navigate and respond to actors and interests in an increasingly polycentric arena of sustainability governance. Data collection involved extensive analysis of secondary data sources available online as well as primary data collection through semi-structured interviews during the period 2014–2017. In total, 59 interviews were held across India, the Netherlands, and the UK with corporations, planters, smallholders, government bodies, and civil society actors. Interviewees were selected based on their involvement in processes of standard-setting in relation to the global tea industry and all interviews were held in person, recorded, and subsequently transcribed by the authors. Key questions raised in the interviews facilitated the identification of the primary actors shaping Trustea, their relationship to pre-existing transnational standards governing the tea industry, and how such actors sought to shape the institutional structure of Trustea in line with particular norms, values, and expectations in relation to legitimation. In both policy-document analysis and interview analysis, we trace both claims about legitimacy and accounts of legitimation activities in terms of designing and debating decision-making procedures, policy outputs, and the discursive construction of Trustea as a new sustainability standard. Data were analysed using thematic coding aided by NVivo software.

4. Trustea as a Polycentric Tool of Governing

Since the 1990s, the Indian tea industry has been governed by numerous transnational sustainability standards, including Rainforest Alliance, Utz Certified, and Fair Trade, which together certify approximately 18% of exported tea from India (Centre for the Promotion of Imports, 2016). Rainforest Alliance is the dominant export standard, certifying approximately 15% of the total volume of tea produced for foreign markets (Rainforest Alliance, 2015). The focus of these global standards has been on export-oriented plantation estates within India rather than smallholder tea growers and other domestic-oriented producers (such as smaller plantations). Whilst the Indian tea industry was developed as an export-oriented industry under colonialism, since the 1960s there has been a significant increase in affordable tea within the domestic market (Lutgendorf, 2012). Population growth, rising incomes, and urbanisation have boosted domestic demand and India is now the world's largest consumer of black tea with almost 90% of the tea produced in India consumed domestically (Tea Board of India, 2018).

The initial introduction of transnational standards into the industry came from corporations opting to use certification for tea sold in Northern markets. Unilever, the world's largest tea buyer, was the "front runner" but major competitors including Tetley and Twinings soon followed suit. The majority of these corporations opted to use Rainforest Alliance to certify their major tea brands. Whilst the use of transnational standards was originally limited to OECD markets, the rapid growth of emerging economies has led some corporations to expand certification into the South. In 2010, Unilever announced its intention to expand certification to emerging markets under the Unilever Sustainable Living Plan. This new strategy was built upon Unilever's recognition that emerging economies represented the majority of the corporation's future growth and that certification could be used to differentiate their branded products within these markets. This strategy involved working in partnership with the established transnational standard Rainforest Alliance to expand tea certification within Southern markets. However, in 2013, a new sustainability standard was launched to govern tea production in India's domestic tea market, which was directed by Unilever's subsidiary Hindustan Lever. This new standard, named "Trustea," marked a significant deviation from the original strategy of the Unilever Sustainable Living Plan. This development raises many questions regarding why a new standard was needed for this market, what this entailed for Rainforest Alliance as the dominant tea standard in the industry, and how Trustea sought to legitimate itself in relation to established transnational sustainability standards.

Trustea governs the social and environmental conditions of tea produced and consumed within India. Its code of conduct is comprised of 11 chapters, including social chapters (labour standards in plantations and small tea gardens, worker protection and welfare), environmental chapters (pesticides, waste disposal, and water management), and food safety standards. Trustea is funded by Unilever's Indian-based subsidiary firm Hindustan Unilever alongside another major Indian-based corporation Tata Global Beverages and the Dutch development agency Initiatief Duurzame Handel (IDH). Trustea is a well-established standard. By 2019, it claimed to have certified 49% of India's total tea production, including 51,463 small tea growers and 622 estates and bought leaf factories (IDH, 2019). It therefore dwarves the volumes certified by Rainforest Alliance and other certification schemes active within the industry. Trustea positions itself as a bottom-up, Southern-led standard designed "by the industry, for the industry" and yet a closer look at Trustea's internal governance reveals a rather more complex set of actors who transcend the typical boundaries of "local" versus "transnational'' standards.

Trustea's internal governance is comprised of three tiers, as illustrated below in Figure 1. The Funders Steering Committee consists of the two largest domestic corporations alongside IDH. The Programme Committee consists of key advisors and implementers, whilst the Advisory Committee constitutes a more inclusive forum through which external stakeholders are invited to comment on Trustea's development.

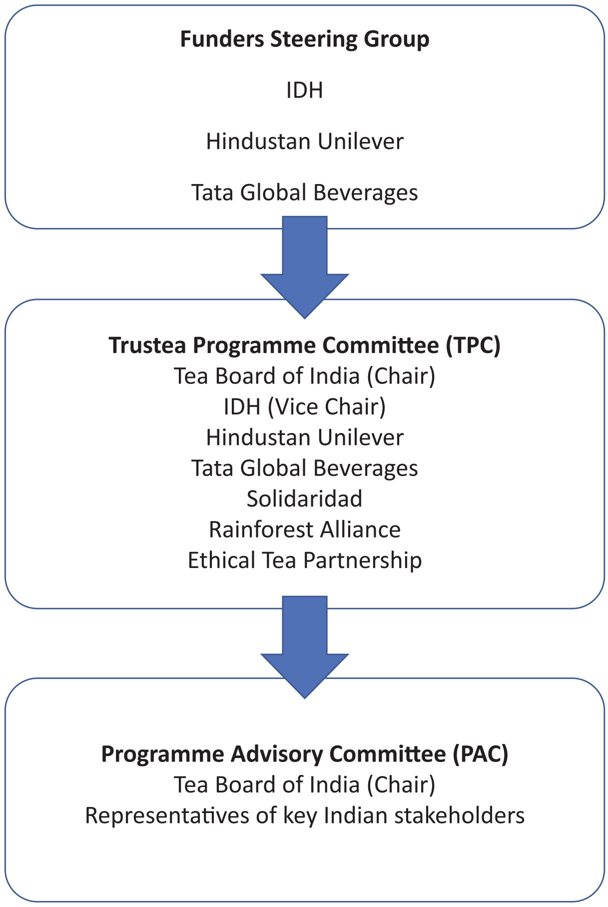

Figure 1. Internal governance structure of Trustea.

Although ostensibly Trustea is a Southern MSI, several member organisations govern the global as well as domestic production chains for Indian tea, as demonstrated in Table 1. The lead corporations—Hindustan Lever and Tata Global Beverages—are not only domestic firms but also global players, meaning that they sell tea in local and global markets (Langford, 2021). Hindustan Lever is a subsidiary of global corporation Unilever whilst Tetley is owned by the Indian conglomerate Tata. Similar levels of complexity between the global and the local can be found in the NGO partner Solidaridad, which is a Dutch organisation with an Indian office which is given significant autonomy to direct projects locally (Langford, 2019). Whilst the Tea Board of India is a domestic

Table 1. Trustea internal governance members and their linkages to polycentric production chains.

Actor	Domestic Supply Chain		Global Supply Chain
Private (lead firm)	Hindustan Unilever Tata Global Beverages	⟷ ⟷	Unilever Tetleys (Tata)
Civil society (NGO)	Solidaridad India	⟷	Solidaridad Rainforest Alliance Utz Certified Ethical Tea Partnership
Public (state)	Tea Board of India		IDH

state-linked actor, the Technical Committee is comprised of several Northern-linked organisations, including other sustainability standards such as Rainforest Alliance. These intersections blur the boundaries of who can be considered "Northern" versus "Southern." or "global" versus "local." This appears to differ from some other Southern standards which appear to be primarily led by local actors (Schouten & Bitzer, 2015).

As this article demonstrates, the embeddedness of these actors within distinct yet intersecting institutional environments leads to a complex set of political processes through which legitimacy for Trustea is sought. The following section describes this in more detail, illuminating the various actors and their perspectives on legitimate governance and demonstrating the difficulties inherent in promoting legitimacy in a world of polycentric trade. Specifically, it examines the ways through which the key actors shaping Trustea sought to legitimate the standard through the lens of input and output legitimacy, as well as through various discursive activities.

5. Legitimation in a World of Polycentric Trade

5.1. Contestation Over Input: Polder and Multi-Stakeholder Models

As discussed earlier, the multi-stakeholder model based on a principle of stakeholder inclusivity has become a dominant norm within transnational standards developed in the Global North. Trustea's early development is partly conditioned by these established norms, which is directly linked to the fact that key actors shaping the standard are embedded within multiple markets. Yet, Trustea's early development is also shaped by debates over the feasibility of replicating such a model in the Indian context as well as *who* in fact counts as a legitimate stakeholder within the Indian context. As this section will demonstrate, these debates were shaped by the necessity of bringing on board reluctant industry actors, such as domestic tea plantations and buyers. Much of the political contestation which follows (outlined below) suggests that domestic lead firms and other industry representatives were a key legitimating audience for Trustea.

In 2012, one year prior to Trustea's launch, the Dutch organisations Solidaridad and IDH sought to shape the standard's institutional design according to the "polder model" of cooperation which laid out a template for stakeholder inclusion. The polder model originates from a Dutch version of consensus-based economic and social policymaking prevalent in the Netherlands during the 1980s and 1990s and has since become the *de facto* standard for all public-private partnerships funded by IDH (OECD, 2016). In Trustea's case, the model was used by the Dutch NGO Solidaridad to counter resistance to the inclusion of trade unions and civil society actors voiced by industry members of the MSI. The polder model as originally designed included the representation of planter associations (The United Planters' Association of Southern India [UPASI], India Tea Association), smallholder associations (Confederation of Indian Small Tea Growers Association, National Federation of Tea Smallholders Association), trade unions, bought leaf factories, and NGOs. Yet, by the time of Trustea's launch in 2013, many of these organisations were absent from the Stakeholder Committee (see Figure 2). These by now excluded local stakeholders (including trade unions, NGOs, and smallholder representatives) were replaced by IDH and Solidaridad who were invited to sit on the Advisory Committee (as well as the other Committees) alongside Rainforest Alliance.

The absence of these local stakeholders points to contestation between different members on what was deemed necessary for legitimacy-building, with resistance towards civil society inclusion evident within the discussions. As an Indian standard, it appears that the MSI-approach to institution building (in which trade unions and/or NGOs are present) was resisted and this resistance can be understood by acknowledging the fractious state of industrial relations in the context of Indian tea production. Members of Trustea frequently referenced the differences between industrial relations in the Dutch versus the Indian context, in which relations between trade unions and planters are highly adversarial. Industry representatives argued that trade union inclusion would result in the failure of Trustea altogether because there could be no hope of "meaningful negotiation" and so the idea was rejected by both planters

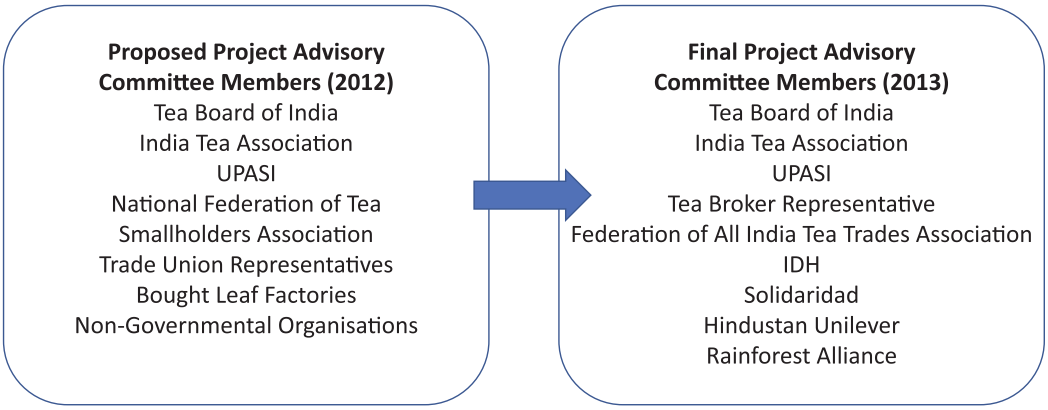

Figure 2. Inclusion of stakeholders: Proposed and final membership of the Trustea Advisory Committee.

and lead firms (NGO 5, 03.06.15; Planter 2, 07.07.15; Planter 4, 20.07.15; Planter 6, 02.07.15). Trade unions, on the other hand, were deeply sceptical about privately-driven standards and their critical stance may well have led them to refuse to cooperate in any case because such MSIs are seen as whitewashing the exploitation of labour. These adversarial relations should be understood and contextualised within the broader history of oppression in the industry under colonialism.

The decision to exclude unions did however create tensions between different member organisations. Solidaridad argued that the polder model should be adhered to, despite the clear differences in industry-trade union relations within the Indian context (NGO 5, 15.02.15). There was a strong belief that the replication of Dutch norms in the Indian context could foster new forms of cooperation and that input legitimacy could be "transposed" from the Dutch to the Indian context. For IDH however, adherence to the polder model was seen as impractical in the local context. For IDH, the fractious relations between industry and trade unions, and their argument that trade unions don't always represent worker interests, meant that their inclusion was not "necessary'' within the production of a legitimate MSI within India (NGO 8, 20.02.15). What is striking here is that "who" is considered important for local input creates tensions not only between Northern and Southern actors but also within Northern actors (IDH and Solidaridad) and between Southern actors (Indian plantations wary of Indian corporate subsidiaries).

The difficulties in transposing the polder model led Solidaridad to pursue alignment with local norms by including stakeholders who were acceptable to local industry. Given that trade union inclusion was not possible, state involvement increasingly became seen as vital to secure Trustea's legitimacy locally (NGO 5, 03.06.15). Corporate actors were sceptical of this, citing concerns over the politicisation of Trustea by "powerful bureaucrats" (NGO 8, 23.03.15) but internal agreement was eventually reached to invite the Tea Board of India (a state-run marketing board) to join both the Programme and Advisory Committees. In theory, this was supported by IDH who argued that their support for Southern-oriented standards marked a transformative shift from the construction of "Western coalitions" to "local convening with local industry, local government" (NGO 8, 04.04.17). Yet, once again, the idea of states and corporations co-developing new standards was novel in the Indian context and the Tea Board initially resisted because it did not trust the "Dutch fragrance" of the programme. Indeed, the Tea Board only agreed to join when the Indian corporation Tata Global Beverages became a member in 2013. Tata's membership swayed the Tea Board because Tata was a local corporation from its inception, and therefore the firm's involvement legitimated the standard from the perspective of the Indian state.

From the perspective of local industry actors, the Tea Board's involvement in turn proved essential in creating local legitimacy (NGO 5, 03.06.15) and dampened reservations that Trustea was a corporate-led programme (Planter 4, 30.07.15). State involvement allowed Trustea to play on a discourse of national identity in which an alternative standard was being developed to remedy the lack of local representation within other transnational standards (Business Association, 25.07.15). Its involvement was also used to deflect criticism from Northern NGOs who were concerned about the degree of stakeholder inclusion within its internal governance (NGO 5, 03.06.15). Yet this perspective was not uniform amongst representatives of the producer community. Some large domestic planters worried that the Tea Board's authority was being usurped by corporations through the process of "subletting its administrative functions" (Planter 7, 04.07.15).

Trustea's evolution demonstrates a movement away from the typical MSI-model of governance to one which depends upon state-backing for its legitimacy. The key audience for Trustea was the local industry as these plantations were already burdened by certification programmes for exports and were resistant to further standards. Therefore, it was necessary to either convince them that Trustea was locally owned (and therefore representative of their interests) or to signal that it was legitimate through the backing of state-based associations. Yet, in an industry shaped by polycentric trade and production networks, member organisations were also keen to demonstrate Trustea's wider legitimacy on the global scale. This in part relates to the fact that members were embedded within the Dutch institutional landscape, and that they should be "seen" to act within the pre-established norms when engaged in establishing new sustainability standards elsewhere. A second process of legitimation, therefore, related to how Trustea established itself in relation to pre-existing so-called "global" standards such as Rainforest Alliance, as discussed below.

5.2. Legitimation by Policy Outputs: Contestation Between Northern and Southern Standards

Whilst Trustea explicitly sought to achieve legitimacy with local stakeholders, its development continued to be shaped by organisational ties to Northern actors. This resulted in continued efforts to also seek legitimacy within the international arena of standard-setting, specifically in relation to the effectiveness of policy outcomes for sustainable tea production. As this section will demonstrate, Trustea's legitimation to Northern audiences (which includes funding bodies and members associations for sustainability standards) draws on two strategies. The first strategy relies on stressing the similarities between Trustea and established sustainability standards such as Rainforest Alliance. The second strategy rests upon emphasising important differences (such as minimum age for workers and engagement with smallholders) which defined new parameters for legitimation in relation to policy outputs. The former marks the earlier period of Trustea's development and somewhat mimics the earlier attempts to transpose norms from the transnational to the local level. The latter is the result of increased tensions between Rainforest Alliance and Trustea, as competition leads Rainforest Alliance and Trustea to place different emphases on policy outputs as sources for legitimation. The debate would focus on *standards as outputs* of policymaking as well as the policy to focus on specific *farmers as regulatory targets*. The question for Trustea rested upon whether Northern audiences accepted these new parameters (or definitions) of legitimate governance or not.

Trustea's development began when Unilever realised that it could not transpose Rainforest Alliance into India's domestic market due to differences between Rainforest Alliance's code of conduct and Indian labour law. Whilst Indian labour law permits minors from the age of 14 to work in non-hazardous industries, Rainforest Alliance stipulated that the minimum age for labour should be 15. In addition, Rainforest Alliance also faced difficulties in engaging with the small tea growers, having only ever certified export-oriented tea plantations (Langford, 2019). Initially, Northern audiences (such as Rainforest Alliance and ISEAL Alliance, an umbrella agency for sustainability standards) perceived Trustea as a less robust but "necessary" governance tool which could provide a "stepping-stone" for producers to eventually meet Rainforest Alliance certification if they wished to export tea (NGO 7, 20.02.15). Through this approach, the two standards would cooperate and producers supplying the domestic market would have the option to become Rainforest Alliance-certified over a multi-stage process. This cooperation was facilitated by Unilever who provided Rainforest Alliance with a role on Trustea's Programme and Advisory Committees.

Initial ideas of cooperation became replaced by competition as some members of Trustea felt that Rainforest Alliance's internal presence allowed them to gain the necessary knowledge to make competitive advances within the domestic market. These concerns were amplified by the fact that Rainforest Alliance was seeking to pursue its own expansion within the domestic market with other tea companies (i.e., beyond Unilever and Tata). This undermined the initial informal understanding between members that Trustea would certify for the domestic market whilst Rainforest Alliance would certify for exports (as it had done up until this time; NGO 5, 03.06.15). Over time, some Trustea members (predominately the NGOs) began to perceive a conflict of interest capable of undermining Trustea's own success within the domestic market. As competition grew, the two institutions began to emphasise their differences rather than their similarities, and this occurred on the international as well as the local scale.

Specifically, Rainforest Alliance argued that it maintained higher benchmarks in relation to labour and environmental standards and therefore was more legitimate, choosing to position Trustea as predominantly a "food safety" rather than a sustainability standard. This was backed by the umbrella association for sustainability standards ISEAL Alliance which claimed that Trustea did not meet their criteria for a legitimate MSI because it had failed to be multi-stakeholder in its design. ISEAL Alliance refused Trustea's application for membership despite Trustea's claim that they followed the guidelines for accreditation. Trustea, on the other hand, argued that its code of conduct improved upon Rainforest Alliance's (already an ISEAL member) because it addressed the specific challenges of certifying producers for the Indian tea market and so it was in fact more legitimate in terms of its coverage of total tea volumes produced. Specifically, Trustea highlighted the adjustments made to the auditing process to include smallholders and bought leaf factories which brought informal sector producers (i.e., smallholders) into the mainstream of sustainability certification. Rainforest Alliance's focus on tea exports had meant that it had ignored smallholders (who only produce for domestic consumption) and therefore lacked the capabilities of adapting its model for the local market. Altogether, this led to competing claims about which standard was a more legitimate model of governance within the domestic market context.

5.3. Legitimation by Discourse: Constructing Indian Indigenous Standard-Setting

A third aspect of legitimation regarding Trustea occurred in the realm of discursive construction. Discourse around the identity of Trustea centred on its geographical construction as a local and Southern-owned standard, in spite of the fact that there are clear linkages and similarities with established sustainability standards in the Global North. Trustea did garner legitimacy with local Indian industry audiences who seemingly mirrored Trustea's emphasis on being locally driven, with multiple planters discussing Trustea as an "indigenous code," "managed by Indians," and "something of our own" (Planter 2,07.07.15; Planter 4, 20.07.15; Planter 6, 02.07.15). Trustea is created "for the industry, by the industry" according to its website. This construction implies that other governing entities are foreign, not sensitive to Indian industry nor Indian understandings of sustainability, and do not allow for substantive Indian involvement. This emphasis on divergence is arguably a useful device given that the history of sustainability governance has been shaped by unequal power relations in which Northern voices have tended to dominate. Interviews with industry representatives, including planters, indicate that they were attracted to Trustea because of its indigenous design but still tended to criticise the wider role of lead firms in setting such standards (Planter 2, 07.07.15; Planter 7, 04.07.15).

Interestingly, actors seeking to *delegitimise* Trustea as a standard-setter also draw upon the same discursive construction of Trustea as an Indian standard. ISEAL Alliance was among the parties belonging to external audiences interpreting Trustea as a "local," "national" standard. In ISEAL's view, Trustea's first aim is the "domestic market" (NGO 5, 03.06.15). ISEAL representatives perceive Trustea's effort as an "Indian" approach, and an attempt to "Indianise" sustainability standard-setting (NGO 6, 18.02.15). ISEAL representative comments indicate that this local character of standards creates a distance to conventional (and therefore legitimate) transnational standards, in terms of policies and standards. This distance needs to be overcome before these standards can be accepted as ISEAL members, (i.e., as legitimate standard-setters; NGO 6, 18.02.15). What is particularly interesting here is the fact that Trustea was largely shaped by Northern norms and by pre-existing transnational standards such as Rainforest Alliance, yet ISEAL Alliance chooses to frame Trustea as a bottom-up standard defined by a national approach to standard-setting. This suggests the development of a discursive separation of North and South within transnational sustainability standards, to justify the exclusion of particular standards. Whilst this study of Trustea took place between 2013 and 2017, Trustea has more recently (in 2021) been recognised as a "community member" of ISEAL. However, it has not become a full member and is not considered "ISEAL Code Compliant." Trustea's community membership indicates the persistence of the tensions outlined in our studied time frame, with ISEAL staff still emphasising the national focus of Trustea as a governance characteristic that distinguishes it from other ISEAL standards, while Trustea's representatives referring to its move towards community membership as the ambition to belong to the class of other ISEAL member standards (ISEAL, 2021).

What is significant here is the fact that Northern and Southern actors use the same discursive device for different purposes, illustrating another interesting aspect of polycentricity and standard creation. Meanings and values as attributed through discourse signify different ideas and constructs. These historical and ongoing antagonisms between North and South drive organisations to continue defining their efforts in such terms, with Northern actors keen to maintain an idea of Southern standards as "lower" and with Southern actors increasingly keen to demonstrate autonomy in decision-making and governance processes.

6. Conclusion

This article focused on how transnational governance institutions developed in an era of polycentric trade seek legitimacy within a contested field of governance. Using the case of Trustea, a Southern-oriented sustainability standard governing India's domestic tea market, this article demonstrated the ways through which the various member organisations sought to manage design and policy dilemmas to reconcile the preferences and beliefs of various audiences. This is in line with the thematic issue's commitment, building on Beetham (1991) to further understand how beliefs about what is legitimate relate to institutional evolutions and changes in economic governance, which may spur, in turn, processes of legitimation and de-legitimation.

Our case study represents a fascinating empirical example of how Northern and Southern interests and beliefs matter when it comes to the shaping of new, Southern-oriented standards. On the one hand, Trustea is funded and backed by corporations and state-linked bodies in the Global North. However, it is simultaneously being developed as a locally embedded standard which claims to reflect the norms of the domestic tea industry. This tension plays out in relation to legitimation strategies, in which there are divergent perspectives on how to mould Trustea with regards to input and output legitimacy as well as how to discursively construct the standard for various audiences. In relation to input legitimacy, Trustea moved from a multistakeholder model to a more exclusive standard, reflecting a shift from appeals to Northern NGOs towards Southern industry audiences. In relation to policy outputs, similarities and differences between Trustea and established transnational standards were emphasised at different stages to legitimate the standard to various audiences. However, as competition emerged, the emphasis on differences became more pronounced as attempts to delegitimate transnational standards became more frequent. Finally, in discursive terms, Trustea's identification as "Southern" has been used by transnational and local interests to advance particular constructions and/or hierarchies which result in legitimation or delegitimation, depending on the audience. As a result, Trustea may become more appealing to Indian audiences, but it is under threat of not being treated as best-in-class in sustainability standard-setting by prominent parts of Northern audiences. The case shows that there is a clear divergence in what these various actors consider legitimate, and that member organisations are concerned with appealing to multiple audiences in different geographies of the global economy. The reasons for this relate directly to the fact that Trustea sits at the intersection of global and domestic value chains in which domestic markets are expanding and global markets are shrinking. Yet, in spite of the growth of the domestic market, Trustea's members continued to be concerned with the legitimation of the standard at the transnational (as well as the local) level.

In terms of how new governance institutions seek to gain legitimacy, this article shows firstly that new Southern-oriented governance initiatives may seek to establish legitimacy in relation to both Northern and Southern audiences. This contrasts with previous studies which show transnational standards emerging in the South as predicated upon different forms of legitimation in relation to pre-established standards (Schouten & Bitzer, 2015). Secondly, this article finds that when Southern-oriented governance institutions develop in an era of polycentric trade, they become embattled in legitimacy struggles with pre-established institutions, even when certifying for different end markets. This is because transnational standards from the North and South are seeking to establish themselves in different markets (often "beyond" their original markets) and to different audiences. Finally, our results show that in the interaction between Northern and Southern-oriented governance institutions, the discursive construction of initiatives on the one hand more locally, nationally, Southern oriented, or on the other more global or Northern-oriented may prove important as a legitimation device, but that different audiences may draw different forms of signification from this. Therefore, we claim that the study of Southern-led transnational standards cannot be simply read as the development of alternative institutions to established transnational standards. This is because the case of Trustea has highlighted the ways through which the polycentric character of global trade leads to complex North-South interactions within sustainability governance practices. This invites a more nuanced perspective on how such governance arrangements seek, gain, and maintain legitimacy in dialogue with their various audiences and sponsors.

In terms of the broader study of legitimation and de-legitimation in global economic governance, we offer a detailed account of how contrasting perspectives on what constitutes proper economic governance, emerging in the Global South yet rooted in different geographies of the world economy, may or may not be reconciled within the internal politics of a new governance institution. This account offers ideas that may inspire further study in this realm. In particular, we highlight the fact that divergent expectations about appropriate input to decision-making in global economic governance may complicate legitimation in an era of polycentric trade. Similarly, we show that particular discursive constructions of economic governance arrangements may enhance the legitimacy of such arrangements for one audience while diminishing it for others. Finally, we show that it is important to study legitimation processes of newly emerging governance arrangements in the context of adjacent, already existing governance arrangements, because important feedback effects (such as competition) may arise (cf. Alter & Meunier, 2009). While we illustrate these patterns in light of divergent expectations about legitimate governance across Northern and Southern audiences, our study at least indicates the continued relevance of differences in attitudes and ideas *within* these audiences, for instance between for-profit and non-profit actors, or among firms with different sizes or business models. Future research should consider these intricate dynamics at play within globalised trade and production networks in order to situate the development of Southern-oriented standards within a complex and ever-changing world of polycentric trade, production, and governance.

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Conflict of Interests

The authors declare no conflict of interests.

References

Abbott, K. W., Green, J. F., & Keohane, R. O. (2016). Organizational ecology and institutional change in global governance. *International Organization*, *70*(2), 247–277.

Alter, K. J., & Meunier, S. (2009). The politics of international regime complexity. *Perspectives on Politics*, *7*(1), 13–24.

Bäckstrand, K., & Söderbaum, F. (2018). Legitimation and delegitimation in global governance: Discursive, institutional, behavioral. In J. Tallberg, K. Bäckstrand, & J. A. Scholte (Eds.), *Legitimacy in global governance: Sources, processes, and consequences* (pp. 101–118). Oxford University Press.

Bair, J., & Palpacuer, F. (2015). CSR beyond the corporation: Contested governance in global value chains. *Global Networks*, *15*(S1), S1–S19.

Beetham, D. (1991). *The legitimation of power*. Red Globe Press London.

Bernstein, S., & Cashore, B. (2007). Can non-state global governance be legitimate? An analytical framework. *Regulation & Governance*, *1*(4), 347–371.

Bitzer, V., & Marazzi, A. (2021). Southern sustainability initiatives in agricultural value chains: A question of enhanced inclusiveness? The case of Trustea in India. *Agriculture and Human Values*, *38*(2), 381–395.

Cashore, B. (2002). Legitimacy and the privatization of environmental governance: How non-state market-driven (NSMD) governance systems gain rule-making authority. *Governance*, *15*(4), 503–529.

Centre for the Promotion of Imports. (2016). *CBI product factsheet: Certified tea in Europe*. https://www.cbi.eu/sites/default/files/market-information/cbi_2016_-_tea_-_pfs_certified_tea_-_final_draft.pdf

Chin, G. T. (2014). The BRICS-led development bank: Purpose and politics beyond the G20. *Global Policy*, *5*(3), 366–373.

Efstathopoulos, C. (2021). Southern middle powers and the liberal international order: The options for Brazil and South Africa. *International Journal: Canada's Journal of Global Policy Analysis*, *76*(3), 384–403. https://doi.org/10.1177/00207020211042915

Fransen, L. (2012). Multi-stakeholder governance and voluntary programme interactions: Legitimation politics in the institutional design of corporate social responsibility. *Socio-Economic Review*, *10*(1), 163–192.

Fransen, L., & Kolk, A. (2007). Global rule-setting for business: A critical analysis of multi-stakeholder standards. *Organization*, *14*(5), 667–684.

Horner, R., & Nadvi, K. (2018). Global value chains and the rise of the Global South: Unpacking twenty-first century polycentric trade. *Global Networks*, *18*(2), 207–237.

Initiatief Duurzame Handel. (2019). *Implementing a sustainability code for the Indian domestic market*. https://www.idhsustainabletrade.com/project/trustea

ISEAL. (2021) *Trustea becomes ISEAL community member*. https://www.isealalliance.org/sustainability-news/trustea-becomes-iseal-community-member

Langford, N. J. (2019). The governance of social standards in emerging markets: An exploration of actors and interests shaping Trustea as a Southern multi-stakeholder initiative. *Geoforum*, *104*, 81–91.

Langford, N. J. (2021). From global to local tea markets: The changing political economy of tea production within India's domestic value chain. *Development and Change*, *52*(6), 1445–1472.

Langford, N. J., Nadvi, K., & Braun-Munzinger, C. (2022). The shaping of "Southern" sustainability standards in a value chain world: Comparative evidence from China and India. *Review of International Political Economy*. Advance online publication. https://www.tandfonline.com/doi/full/10.1080/09692290.2022.2089713

Loconto, A., & Fouilleux, E. (2014). Politics of private regulation: ISEAL and the shaping of transnational sustainability governance. *Regulation & Governance*, *8*(2), 166–185.

Lutgendorf, P. (2012). Making tea in India. *Thesis Eleven*, *113*(1), 11–31. https://doi.org/10.1177/0725513612456896

Nadvi, K. (2014). "Rising powers" and labour and environmental standards. *Oxford Development Studies*, *42*(2), 137–150.

OECD. (2016). *Private sector peer learning. Country report: Netherlands*. https://www.oecd.org/dac/peer-reviews/Peer-Learning-Country-Report-Netherlands.pdf

Otieno, G., & Knorringa, P. (2012). Localising global standards: Illustrative examples from Kenya's horticulture sector. In M. P. van Dijk & J. Trienekens (Eds.), *Global value chains: Linking local producers from developing countries to international markets* (pp. 119–135). Amsterdam University Press.

Palazzo, G., & Scherer, A. G. (2006). Corporate legitimacy as deliberation: A communicative framework. *Journal of Business Ethics*, *66*(1), 71–88. https://doi.org/10.1007/s10551-006-9044-2

Rainforest Alliance. (2015). *India's tea estates*. https://www.rainforest-alliance.org/in-the-field/india-tea-estates

Sasser, E. N., Prakash, A., Cashore, B., & Auld, G. (2006). Direct targeting as an NGO political strategy: Examining private authority regimes in the forestry sector. *Business and Politics*, *8*(3), 1–32. https://doi.org/10.2202/1469-3569.1163

Schouten, G., & Bitzer, V. (2015). The emergence of Southern standards in agricultural value chains: A new trend in sustainability governance? *Ecological Economics*, *120*, 175–184. https://doi.org/10.1016/j.ecolecon.2015.10.017

Suchman, M. C. (1995). Managing legitimacy: Strategic and institutional approaches. *Academy of Management Review*, *20*(3), 571–610.

Tallberg, J., & Zürn, M. (2019). The legitimacy and legitimation of international organizations: Introduction and framework. *The Review of International Organizations*, *14*(4), 581–606.

Tea Board of India. (2018). *Executive summary of study on domestic consumption of tea in India*. http://www.teaboard.gov.in/pdf/Executive_Summary_Tea_Consumption_20062018_pdf5940.pdf

van Roozendaal, G., & de Deugd, N. (2022). Current challenges to the legitimacy of international economic

and financial arrangements. *Politics and Governance*, *10*(3), 90–97.
Yin, R. K. (2009). *Case study research: Design and methods* (4th ed.). SAGE.
Zarakol, A. (2019). "Rise of the rest": As hype and reality. *International Relations*, *33*(2), 213–228.
Zaum, D. (Ed.). (2013). *Legitimating international organizations*. Oxford University Press.

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