

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein
Frontmatter

[More information](#)

THE LEGITIMACY OF INTERNATIONAL HUMAN RIGHTS REGIMES

The past sixty years have seen an expansion of international human rights conventions and supervisory organs, not least in Europe. While these international legal instruments have enlarged their mandate, they have also faced opposition and criticism from political actors at the state level, even in well-functioning democracies.

Against the backdrop of such contestations, this book brings together prominent scholars in law, political philosophy and international relations in order to address the legitimacy of international human rights regimes as a theoretically challenging and politically salient case of international authority. It provides a unique and thorough overview of the legitimacy problems involved in the global governance of human rights.

ANDREAS FØLLESDAL is Professor of Political Philosophy at the Norwegian Centre for Human Rights, University of Oslo, Norway.

JOHAN KARLSSON SCHAFFER is a senior researcher at the Norwegian Centre for Human Rights, University of Oslo, Norway.

GEIR ULFSTEIN is Professor of International Law at the Department of Public and International Law, University of Oslo, Norway.

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political
and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein
Frontmatter

[More information](#)

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein

Frontmatter

[More information](#)

THE LEGITIMACY OF INTERNATIONAL HUMAN RIGHTS REGIMES

Legal, Political and Philosophical Perspectives

Edited by

ANDREAS FØLLESDAL

JOHAN KARLSSON SCHAFFER

GEIR ULFSTEIN



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political
and Philosophical Perspectives
Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein
Frontmatter
[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Published in the United States of America by Cambridge University Press, New York

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of
education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107034600

© Cambridge University Press 2014

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2014

Printed in the United Kingdom by CPI Group Ltd, Croydon CR0 4YY

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging in Publication data

The legitimacy of international human rights regimes : legal, political and philosophical
perspectives / editors, Andreas Føllesdal, Johan Karlsson Schaffer, and Geir Ulfstein.

pages cm. – (Studies on human rights conventions)

Includes bibliographical references and index.

ISBN 978-1-107-03460-0 (hardback)

1. Human rights. 2. Effectiveness and validity of law. I. Føllesdal, Andreas, editor of compilation. II. Schaffer, Johan Karlsson, 1976– editor of compilation. III. Ulfstein, Geir, 1951– editor of compilation.

K3240.L43 2013

341.4'8–dc23

2013018457

ISBN 978-1-107-03460-0 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of
URLs for external or third-party internet websites referred to in this publication,
and does not guarantee that any content on such websites is, or will remain,
accurate or appropriate.

CONTENTS

<i>Notes on contributors</i>	<i>page vii</i>
<i>Preface</i>	xi
1 International human rights and the challenge of legitimacy	1
JOHAN KARLSSON SCHAFFER, ANDREAS FØLLESDAL AND GEIR ULFSTEIN	
2 The legitimate authority of international human rights	32
SAMANTHA BESSON	
3 On the legitimate authority of international human rights bodies	84
STEVEN WHEATLEY	
4 Equality, human rights, and political legitimacy	117
KRISTEN HESSLER	
5 The legitimacy of international interpretive authorities for human rights treaties: an indirect-instrumentalist defence	141
BAŞAK ÇALI	
6 Torture and the politics of legitimization in international law	165
IAN HURD	
7 Legitimacy, institutional power, and international human rights institutions: a conceptual enquiry	190
LYNN DOBSON	

Cambridge University Press
978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political
and Philosophical Perspectives
Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein
Frontmatter
[More information](#)

8	Legitimacy, global governance and human rights institutions: inverting the puzzle	212
	JOHAN KARLSSON SCHAFFER	
9	The democratic legitimacy of international human rights conventions: political constitutionalism and the Hirst case	243
	RICHARD BELLAMY	
10	Much ado about nothing? International judicial review of human rights in well-functioning democracies	272
	ANDREAS FØLLESDAL	
	<i>Index</i>	300

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein

Frontmatter

[More information](#)

CONTRIBUTORS

RICHARD BELLAMY is Professor of Political Science and Director of the European Institute, University College London. His research focuses on democracy, citizenship and constitutionalism in modern societies. Recent publications include *Political Constitutionalism* (Cambridge University Press, 2007) and *Citizenship: A Very Short Introduction* (2008). He is currently completing a book (with Dario Castiglione) on *A Republic of European States: International Democracy and Republicanism in the EU* for Cambridge University Press.

SAMANTHA BESSON is Professor of Public International Law and European Law and Co-Director of the European Law Institute at the University of Fribourg, Switzerland. Her research focuses on international and European human rights law and theory and on the philosophy of international and European law. She co-edited the volume *The Philosophy of International Law* (2010) and is currently completing a monograph entitled *A Legal Theory of Human Rights*.

BAŞAK ÇALI is Director of the MA in Human Rights, a senior lecturer in Human Rights at University College London's Department of Political Science and a fellow of the University of Essex Human Rights Centre. Her most recent work includes *International Law for International Relations* (2010) and 'The Legitimacy of the European Court of Human Rights: A Sociological Interpretive Approach' (*Human Rights Quarterly*, 2013).

LYNN DOBSON is a senior lecturer in the Department of Politics and International Relations at the University of Edinburgh. Her recent interests and work are mainly in the areas of citizenship, representation, legitimacy and authority and political obligation, especially as they apply in non-domestic political contexts.

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein

Frontmatter

[More information](#)

viii

NOTES ON CONTRIBUTORS

ANDREAS FØLLESDAL is Professor of Political Philosophy at the University of Oslo. He is Principal Investigator for the European Research Council Advanced Grant *MultiRights: The legitimacy of multi-level human rights judiciary* (2011–2016) and Director of the Centre of Excellence *PluriCourts: The legitimate roles of the judiciary in the global order*. He received his PhD in Philosophy in 1991 at Harvard University. Føllesdal publishes in the field of political philosophy, mainly on issues of international political theory, globalization/Europeanization, human rights and socially responsible investing.

KRISTEN HESSLER is an assistant professor at the University at Albany (SUNY). She received her PhD from the University of Arizona. She has published articles on international human rights law, democracy and global justice, the human rights approach to global public health and environmental justice.

IAN HURD is an associate professor of Political Science at Northwestern University. His research is on the politics of international law. Recent areas of interest include the laws of war, pre-emption, human rights and humanitarianism and international organizations. He has written widely on international organizations, international law and international relations, including the books *After Anarchy: Legitimacy and Power in the UN Security Council* (2007) and *International Organizations: Politics, Law, Practice* (Cambridge University Press, 2011). His articles and essays have appeared in *International Organization*, *International Politics*, *Foreign Affairs*, *Global Governance*, *Ethics and International Affairs*, the *Journal of International Organization Studies*, and elsewhere.

JOHAN KARLSSON SCHAFFER is a senior researcher at the Norwegian Centre for Human Rights, University of Oslo. He received his PhD in Political Science from the University of Gothenburg. His main research interests are in the areas of political and international theory. Recent publications include articles in *Review of International Studies*, *Political Studies* and *Human Rights Review*.

GEIR ULFSTEIN is Professor of International Law at the University of Oslo. In 2009–2010, he was co-director of the research project *Should states ratify human rights treaties?* at the Centre for Advanced Studies in Oslo. Ulfstein is Head of the Legal Research Team of the European Research Council Advanced Grant *MultiRights: The legitimacy of multi-level human rights judiciary* (2011–2016) and Deputy-Director of the Centre of Excellence *PluriCourts: The legitimate roles of the judiciary in*

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein

Frontmatter

[More information](#)

NOTES ON CONTRIBUTORS

ix

the global order. He is co-editor of the book series Studies on Human Rights Conventions, Cambridge University Press.

STEVEN WHEATLEY is Professor of International Law and Director of the Centre for International Law and Human Rights at the University of Lancaster. He has written widely on the subject of human rights and democracy in international law and is the author of *The Democratic Legitimacy of International Law* (2010).

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political
and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein

Frontmatter

[More information](#)

P R E F A C E

The treaties, practices and institutions of international human rights seem to enjoy much support in the contemporary world, judging by ratification and vocal claims of support. Indeed, philosopher Charles Beitz has suggested that “if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights” (*The Idea of Human Rights*, Oxford University Press, 2009). Yet their legitimacy is challenged on several fronts. Not only are these international human rights commitments often breached, but states are now increasingly prepared to admit as much. Indeed, many voices now express considerable scepticism about the content, nature and justifications of such international human rights and the institutions established to uphold them. This book examines the contested grounds of legitimacy of the developing global architecture of international human rights law and the international courts and treaty bodies established by human rights conventions.

This is the third book in the Cambridge University Press series *Studies on Human Rights Conventions*. This series is the result of a larger research project, *Should states ratify human rights conventions?*, at the Centre for Advanced Study, Oslo, Norway. The project was led by Andreas Føllesdal and Geir Ulfstein. We are grateful for the hospitality of the Centre under Scientific Director, Gro Steinsland and Office Manager, Maria M. L. Sætre. This volume has also benefited from the European Research Council Advanced Grant #269841 *MultiRights: The legitimacy of multi-level human rights judiciary*, and the Research Council of Norway Centre of Excellence *PluriCourts: The legitimate roles of the judiciary in the global order*.

The book was developed over a period of three years, including two author meetings in Oslo. These meetings were important in shaping a common approach to this study. The chapters of the book seek to address the legitimacy challenges of the international human rights regimes. The authors have been left with considerable freedom in their choice of approach to their respective chapters.

Cambridge University Press

978-1-107-03460-0 - The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives

Edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein

Frontmatter

[More information](#)

Several people at Cambridge University Press were helpful in producing this volume. We are grateful for professional assistance and guidance, especially in contacts with Nienke van Schaverbeke, Finola O'Sullivan, Elizabeth Spicer and Richard Woodham. In Oslo, Atle Kolbeinstveit competently organized the two author meetings, and Stephanie Schmölzer provided efficient assistance in preparing the manuscript.

Last but not least, we thank all the authors who contributed to this volume for their engagement, patience and collegiality, and for a great collective learning process.