Suggested Reference


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The legitimacy of indigenous peoples’ norms under international law

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Overview

- Legitimacy:
  - “the quality in international norms that leads states to internalise the pull to obey them even when it might not be in their interest to do so and despite the lack of an international sovereign or sanction”
- Procedural
- Substantive
- Engagement (differs from scholarship usually associated with legitimacy – closely related to social movement theory, constructivism etc)
Procedural legitimacy

- **Deficits:**
  - Proliferation of norm makers: unsettled, unclear, unordered process
  - Unauthorised extension of mandates leads to institutional competition
  - Changes in process mid way through law making

- **Positives**
  - Dialogue between norm makers
  - Reflexive policing of mandate boundaries
  - Processes remain robust
  - Venues to respond to indigenous peoples’ issues

- Participation of indigenous peoples
Substance legitimacy

- Deficits
  - Indeterminacy
  - Incoherence

- Positives
  - Greater fairness
  - Dialogue facilitating greater determinacy
  - Indeterminacy permits greater flexibility in norm application
Engagement legitimacy

- States engagement with norm infrastructure leads to internalisation of the norm, even involuntarily.
- Norm infrastructure includes international institutional framework, civil society, courts and commissions.
- Case study: New Zealand’s change of position on the Declaration on the Rights of Indigenous Peoples.