Legitimacy in the International Order:
The Continuing Relevance of Sovereign States

International institutions are broadly experiencing, if not a legitimacy crisis, at least a legitimacy malaise. On both the Left and the Right, there is a sense that the structural conditions of social life increasingly defy political (and plausibly "democratic") regulation. The present backlash, though lacking any coherent common program, reflects a common yearning for a palpable sense of membership in a political community, the responsible agents of which can exert control over the material conditions that undergird the pursuit of a favored way of life.

The state is the only entity within which individuals’ interests and attitudes may (when aggregated with those of others similarly situated) have palpable weight in decisions affecting the economic, social, and cultural conditions within which they pursue their life plans. Whatever "democracy" might be taken to mean, the properties unique to the state constitute the essence of what one can plausibly be democratic about.

State sovereignty thus plays a role within international law. Should exertions of doctrinal ingenuity encroach too boldly on state prerogatives, international law’s reach may come to exceed its grasp: domestic authority, denied its place within international law, can be expected to reassert itself against international law, and to draw substantial popular support for so doing. The paper will identify some of the recent doctrinal innovations that undermine the previously established legal prerogatives of states, and will consider whether these pose a risk of compromising the legitimacy of international legal obligations in the eyes of crucial constituencies.

Brad R. Roth is a Professor of Political Science and Law and a member of the Wayne State Academy of Scholars. He is the author of Governmental Illegitimacy in International Law (Oxford University Press, 1999), Sovereign Equality and Moral Disagreement (Oxford University Press, 2011), and a wide range of other publications addressing questions of sovereignty, constitutionalism, human rights and democracy.