

# Performing Legitimacy in Irregular Criminal Justice: Lessons from the People's Tribunals

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## Abstract:

This paper examines the so-called “People’s Tribunals” in terms of the concept of sociological legitimacy. This article employs a qualitative socio-legal methodology combining doctrinal analysis and interpretive case studies. By examining critical responses to the Russell Tribunal (established to prosecute those responsible for the war in Vietnam), the article argues that there are two primary objections: the positivist critique and the procedural critique. The former argues that all law originates in the state. The second is that people’s tribunals are procedurally unjust. The paper argues that the normative expectations of putatively legal institutions, principles of due process and substantive justice function as tools for irregular institutions to establish their authority as do more trivial behaviors within the courtroom itself.

**Keywords:** People’s Tribunals; Sociological Legitimacy; International Criminal Justice; Irregular Legal Institutions

## INTRODUCTION

Much of the research on legitimacy in international institutions has focused on bodies such as the United Nations (UN) or the International Criminal Court (ICC), organizations that are linked to the traditional state-based international order. Other scholars have sought to examine the normative foundations of international law beyond the state, including the role of human rights and international humanitarian law in establishing normative legitimacy. Few researchers, however, have focused on the legitimacy of non-state-based, or irregular criminal justice institutions. This paper contributes to this literature by examining how irregular criminal justice institutions construct their legitimacy without recourse to state-based norms or institutions.

In February 2023 a tribunal was convened in The Hague to hear evidence against the Russian Federation in general and by Vladimir Putin in particular. The defendants were accused of criminal aggression allegedly committed in the commencement of the 2022 invasion of Ukraine. During these hearings, “The People’s Court” (or the “Ukraine Tribunal” as it was sometimes called) listened to testimony from various experts, eyewitnesses, and victims regarding the crimes allegedly committed by in Ukraine. Testimony was presented before a set of three judges clad in black robes and a somber expression as they sat upon a dais. The tribunal’s verdict, an endorsement of an indictment for President Putin, was in many ways a foregone conclusion, but nonetheless, its findings were broadcast by international news services and picked up by the likes of the Associated Press (Corder, 2023), CBS News (Herridge, 2023), and *The Guardian* (M. Yang et al., 2023).

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Of course, this tribunal was not an ordinary legal institution like a domestic criminal court or even an international body like the ICC or the International Court of Justice (ICJ), much less was it a formal fact-finding mission operating under the auspices of any state or international body (OHCHR, 2022). Rather, it was an entirely independent body, *sui generis*, and operating outside of the legal bounds of any state or international institution. Its judges were self-appointed if illustrious figures (Stephen Rapp had previously served as a prosecutor at the ICTR as well as the SCSL and served as US Ambassador at large for War Crimes during the Obama administration) who were steeped in the fine points of international law, and it met in a forum unsanctioned by any traditional intergovernmental or international body. While the findings of the tribunal made international news, state actors, including the Russian government and the European Union, barely took notice of it the Russian embassy didn't respond to an invitation to appear, and other states mostly ignored its findings. The ICC issued its own arrest warrant for Putin less than a month later and there was no mention of the Ukraine tribunals' findings in its indictment (International Criminal Court, 2023).

While it may strike observers as eccentric, quixotic, and even bizarre to engage in such a process, there is a long history of such irregular tribunals – bodies operating outside of the “regular legal world” of national courts, but which nonetheless claim some authority to adjudicate over important claims of international law and policy. Critics can easily behold its obvious shortcomings and conclude that it is at best merely symbolic justice and at worst a waste of time and resources (Penrose, 2025).

Perhaps the best-known body of this sort is the so-called “Russell Tribunal”, an irregular court created by British Philosopher Bertrand Russell in 1967 to investigate and rule on war crimes committed by US forces in Vietnam. Similar tribunals have since been formulated for China, Iran, and Myanmar among many others, all following roughly the same script: an independent, self-appointed body claiming the authority to address some of the thorniest and most heated international human rights issues including armed conflicts, repressive governments, and even corporate misconduct, conducting a legalistic inquiry into alleged wrongdoing, and then reaching a judgment. Such institutions have become a regular part of international discourse and as such deserve academic reflection from a variety of fields.

Collectively these bodies are often referred to as “People’s Courts” or “People’s Tribunals” (and sometimes as “International Citizens Tribunals” to avoid reference to Nazi and Soviet courts that both went by similar names” (Klinghoffer, 2002). Shahshahani defines these tribunals as “forums of justice set up by social justice movements and organizations to adjudicate cases often against states and state-backed corporations” (Shahshahani, 2022) As bodies, these institutions raise important questions about the nature of law from a sociological perspective: Precisely because they are so marginal to the world of international justice, they can show how the discourses and structures of legality operate when they are shorn of their traditional institutional mooring, that is when legal experts “think legally” and “talk legally” outside of the confines of ordinary (state-based) legal institutions.

In this paper I will argue that the discourses and routine actions in the courtroom and the procedures that they follow in administering justice are not simply the ingrained professional habits of a courtroom bureaucracy, but in the context of marginal courts, they communicate something to a skeptical public: that these institutions are both serious and legitimate and therefore deserve to be taken seriously. From this perspective, these practices and discourses are tools to communicate what sociolegal scholars describe as sociological legitimacy (Fallon, 2005). The people who are involved in the court are not wild-eyed idealists to be summarily dismissed by critics, but rather thoughtful, seasoned professionals who deserve to be granted authority not only because of who they are, but equally because of how they act while in the courtroom. Sociological legitimacy is performed and earned, not granted by political authorities.

A central conceit of this essay is that legitimacy matters for legal and quasi-legal institutions and that this legitimacy isn't simply “given” on account of moral gravitas or institutional pedigree but rather must be embodied or *performed* at even the most granular levels within a courtroom institution. As Follesdal (2020) has pointed out, legitimacy in general is one of the central challenges for all international courts and the main source of critique (Follesdal, 2020). These institutions care about the

perceived legitimacy of their proceedings as they summon the rhetoric of law and justice in their proceedings and findings, and this legitimacy must be exhibited in ways that are unique given their particularly precarious status within the discourse of international justice. Particularly in the absence of other more traditional reservoirs of legitimacy, legal actors must strive collectively to assert their right to decide on issues through other, indirect means that sociolegal scholars are particularly well suited to study. These tribunals show us how the normative expectations of putatively legal institutions, principles of due process and substantive justice, function as tools by which irregular institutions to establish their authority as do more trivial behaviors within the courtroom itself. Because they are unable to rely upon a state-centered institutional lineage, such as reference to a constitutional *grundnorm*, their authority is naturally open to question by even sympathetic observers. The legitimacy issues that people's tribunals are the same as other international institutions such as the ICC and the ICJ, though here they are found *in extremis*.

The article makes three contributions to existing literature. First, it reconceptualizes People's Tribunals through the sociolegal concept of sociological legitimacy rather than treating them solely as normative or political projects. Second, it links the positivist and procedural critiques of such tribunals into a single analytical framework centered on legitimacy performance that is, how these tribunals embody legitimacy through their discourse, procedures, and practices. Third, it shows how procedural fairness in irregular tribunals functions not only as a normative ideal but also as a strategy of persuasion directed towards global publics.

## METHODS

This article employs a qualitative socio-legal methodology combining doctrinal analysis and interpretive case studies (Bgdan, 2025). Rather than assessing the legal validity of People's Tribunals in a positivist sense, it examines the means by which legitimacy is constructed, performed, and contested in irregular legal institutions. The analysis is informed by sociolegal scholarship on legitimacy, particularly Weberian sociological legitimacy and dramaturgical approaches to institutional performance.

Methodologically, the article adopts a comparative case study centered on the Russell Tribunal and the 2023 Ukraine People's Tribunal as historically significant and analytically contrasting examples. The Russell Tribunal is examined as the foundational model of irregular international criminal adjudication, while the Ukraine Tribunal provides a contemporary example demonstrating how later tribunals have responded to earlier critiques, particularly concerning procedural fairness.

The research relies on doctrinal materials, including tribunal statutes, judicial opinions, tribunal findings, archival materials, journalistic accounts, and scholarly literature on international criminal law and sociolegal theory. These sources are analyzed through interpretive and normative inquiry in order to identify how procedural norms, courtroom practices, and legal rhetoric function as mechanisms for producing sociological legitimacy.

The case selection in this study is purposive rather than representative. The objective is not empirical generalization across all People's Tribunals but rather is involved in theory-building: using illustrative cases to explain how legitimacy performance operates in irregular criminal justice institutions. The Russell Tribunal was selected as a subject because of its centrality in the history of People's Tribunals. Because this body stands as the first recognized institution of this type of the modern era, it has served as the template for the construction of all later tribunals. More recent tribunals, whether created under the auspices of the Permanent People's Tribunal based in Rome or developed independent of it (such as the Ukraine Tribunal) have relied on the Russell Tribunal as their model (Permanent People's Tribunal, 2016). They have largely mimicked its structure and language, though they have often times made important deviations from its template. These facts make the Russell Tribunal an appropriate place to study the impact of legitimacy on international institutions.

## RESULTS

### A Brief History of People's Tribunals

In the modern era there have been several important people's tribunals that have served as precedents for the Ukraine People's Tribunal. Perhaps the best-known of these was the first – the Russell Tribunal. Established by the British philosopher and social critic Bertrand Russell, it held a series of public hearings in the spring and fall of 1967 to investigate the American war in Vietnam. Aghast at atrocities committed by US forces there, Russell reached out to other leading left-wing critics to convene a tribunal designed to investigate and pronounce upon the legality of US involvement in Vietnam as well as to examine charges that US forces had committed war crimes in Southeast Asia. Luminaries such as Jean-Paul Sartre, Simone de Beauvoir, and James Baldwin participated in the hearings.

While the tribunal was established outside of the framework of the existing state system, many governments took a direct interest in the challenge it posed to their foreign policy goals as well as their domestic politics. They sought to undermine it both publicly as well as behind the scenes. It alarmed the US government enough for officials to make conscious efforts to undermine it – feeding negative material to newspapers and refusing to allow Vietnamese witnesses to travel to the hearings. President De Gaulle denounced the institution through the French media in an open letter to Sartre (discussed below). The American press was particularly hostile, but even the European press was skeptical, objecting to the body's use of legal terms like “tribunal” and “court” and using so-called scare quotes to avoid attributing any true authority to the body (Klinghoffer, 2002).

Beyond the more overtly political attacks from supporters of the war, some critics raised challenges to the tribunal based on a number of grounds. The most obvious problem they pointed out was the tribunal's lack of affiliation with any recognized governmental authority. This represented a logistical problem as the tribunal would not be able to compel testimony from witnesses or escape governmental harassment. However, a deeper version of this objection focused on the tribunal's legitimacy: Who authorized these people to pronounce on the legality of a war that none of them participated in and by what political authority did the tribunal make its rulings? As De Gaulle succinctly put this objection in his letter to Sartre: “I have no need to tell you, that justice of any sort, in principle as in execution, emanates from the state. This is why the government has decided to oppose the Tribunal's meeting in our country since, through its very form, the Tribunal would be acting against that very thing which it is seeking to uphold (Duffett, 1968). De Gaulle's is a positivist critique: the normative legitimacy of justice institutions must trace back to the sovereign state (Kelsen, 2005). Because such tribunals do not reflect the will of any sovereign state (or even the will of the international community derived therefrom) they do not deserve the status of a legal body and therefore are illegitimate *qua* legal institutions.

But Russell and his team were undaunted, arguing that institutions of justice need not be rooted in the state to be legitimate. In fact, statehood may have been an impediment to justice in Russell's view. As Krever puts it (citing Russell himself), “Lacking *force majeure* and backed by no state, it could not hope to compel individuals to stand accused or to impose sanctions (Krever, 2017). These, though, were not limitations, Russell insisted, but rather virtues: unencumbered by reasons of state, the Tribunal was free to undertake its ‘solemn and historic investigation’ impartially and ‘record the truth in Vietnam’ (Archibugi Daniele & Pease, 2018). Precisely because it wasn't affiliated with any government, the Russell Tribunal was free to act as an objective body and by this reasoning its non-governmental status made its findings more valid than an “official” one that was likely to be tainted by political interests. Russell further drew upon the International Military Tribunal at Nuremberg for inspiration – that tribunal was not under the authority of any state but was rather established by right of conquest. The Nuremberg Tribunal was an “irregular” court too and it widely accepted by the public as legitimate, even the crowning achievement of western ideals of the rule of law.

While the impact of the tribunal on the progress of the Vietnam war or on public opinion regarding it was minimal (it wrapped up its proceedings after eight days of hearings and issued its findings shortly afterwards, some eight years before the end of the war), the model of a people's tribunal was taken up

by like-minded social critics, including those directly affiliated with the philosopher himself (Klinghoffer, 2002). Perhaps the best known among these successor institutions was convened by the Italian jurist Leilo Basso and Russell's wife Edith and investigated crimes committed by right-wing governments in South America (Brazil, Argentina, Chile) among others. Later, Basso and the Russell Foundation created a Permanent People's Tribunal in Bologna that has conducted hearings on dozens of different conflicts and situations around the world ranging from corporate activities in southern Africa to crimes in the former Yugoslavia to the policies of the International Monetary Fund and the World Bank (Permanent People's Tribunal, 2016). Other independent tribunals have included tribunals on the situation of the Rohingya people in Burma (The People's Tribunal on Myanmar), a tribunal on crimes allegedly committed by the Islamic Republic of Iran, and crimes committed against journalists. Whether or not the Russell Tribunal itself had a significant impact on global affairs, it has inspired numerous bodies to follow in its footsteps.

### **The Russell Tribunal and the Sociolegal Problem of Legitimacy**

Over the decades, the Russell Tribunal has had many defenders, representing various streams of legal theory – many of which have been aimed at rebutting De Gaulle's positivist critique. Falk defended the Tribunal on pragmatic grounds, arguing that it served as an important counterbalance to the claims of legitimacy dominated by sovereign states, none of which were uninterested parties in the Vietnam War (Falk, 2012):

“The Russell Tribunal may not have been ‘legal’ understood in the sense of deriving its authority from the state or from international organizations, but it was ‘legitimate’ in responding to double standards, by calling attention to massive crimes and dangerous criminals who otherwise might enjoy a free pass, and by producing a generally reliable and comprehensive narrative account of criminal patterns of wrongdoing and flagrant violations of international law that destroy or disrupt the lives of entire societies and millions of people.”

Zunino's analysis of the Russell Tribunal is similarly sympathetic, arguing that it is a precursor to critical approaches to justice adopted by later critical legal theories and critical transitional justice theories (Zunino, 2016). According to his analysis, the Russell Tribunal “rejected legalism, questioned the state and denounced a global order that relegated socioeconomic inequality to a secondary position.” However, he acknowledges that the tribunal was largely a failed effort in both ending the war in Vietnam and in shaping thinking about international law and justice. As he admits, “Those authors who mention the [Russell] Tribunal do so briefly, if not dismissively.” Whatever its claims as a philosophical critique of international legality and traditional forms of justice, sociologically it was largely ineffective.

People's Tribunals occupy a space between “regular courts” under the auspices of a sovereign state, and crude forms of popular vengeance represented by lynch mobs or vigilante groups. People's courts purport to represent “the people” in an unmediated fashion. That is to say that they strive for the legitimacy commonly granted to traditional courts but must do so indirectly – they cannot point to any state legal doctrines for their legitimacy. They must establish their right to adjudicate through alternate routes. They are not convened under the authority of an existing political institution but rather occupy a space between institutionalized justice and bare revenge, but they further stand in a liminal space between sociological legitimacy and normative legitimacy. References to “revolutionary justice”, such as that of Russell and Sartre, sought to short-circuit this issue by waving at a broader notion of “the people” that is meant to avoid these objections.

### **The Procedural Critique**

As we have already seen, the People's Courts in general and the Russell Tribunal in particular, faced a good deal of skepticism, particularly from De Gaulle and his fellow positivists. However, the challenges facing the first Russell Tribunal weren't entirely a fabrication of American and allied propaganda nor were they all the result of an excessive philosophical reliance on the state and its purported monopoly over the law. Along with the positivist critique, was a second, procedural critique of the tribunal. Critics who were aligned with its anti-war cause and loathed US imperialism in Southeast Asia, nonetheless, opposed the tribunal because they perceived it as an unfairly one-sided

affair. Several prominent figures refused to participate in the tribunal on account of the biased nature of the proposed proceedings. The playwright Arthur Miller and the cultural critic Lewis Mumford objected to the lack of a defense and pushed for a less lopsided court (Klinghoffer, 2002). Similarly, Staughton Lynd, a history professor at Yale and civil rights activist refused to participate because “he felt the group would not give the United States ‘its day in court’”. In essence, the critics pointed to a failure to meet the standards of procedural fairness found in traditional liberal democracies.

It is true that the Russell Tribunal did not provide procedural safeguards commonly understood to ensure that claims of criminality are rigorously scrutinized. Even if the tribunal had been constituted by a recognized international or national body, it was effectively a kangaroo court because it failed to adequately present both sides of the case. There was no form of defense counsel or even an opposition within the tribunal itself, and all the panelists were selected because of their known antiwar sentiments. There was nobody participating in the tribunal who represented the perspective of the United States or the government of South Vietnam. In a form of circular reasoning, the Russell Tribunal “was only concerned with crimes committed by the United States on the basis that the Vietnamese, as victims of the crime of aggression, were somehow justified in their heinous acts” (Archibugi Daniele & Pease, 2018). Russell had even reached out to Ho Chi Minh for funds to help operate the tribunal. The critics had a persuasive case that even if the court were legitimate without the backing of any states, it was nonetheless illegitimate because of its improper constitution but equally it was illegitimate because of its procedures, at least according to conventional standards.

When confronted with this criticism, Russell was dismissive: “The International War Crimes Tribunal is a revolutionary tribunal. We have no armies and no gallows. We lack power, even the power of mass communication. It is overdue that those without power sit in judgment of those who have it” (Duffett, 1968). As Sartre himself put it, “There is no question of judging whether American policy in Vietnam is evil” (Krever, 2017). As a judge, he only claimed to be interested in the legality of the war, not its morality. (One imagines how an ordinary defendant would have responded had that judge described her as “evil” before even hearing evidence in a case.) Effectively, the court operated under the assumption that the Vietnam war was wrong and that no effort to legitimize it could be carried out in good faith. The only question was the extent of the wrongfulness of the war and whether it violated the principles set out by the Nuremberg court two decades earlier.

Echoing Russell, Byrnes and Sim have argued that procedural critics of People’s Tribunals miss the point. They believe that such critics remain unjustifiably attached to a state-centric model of justice and therefore fundamentally fail to understand the novel theory of law underlying the people’s tribunals. “People’s tribunals will always find it difficult to escape the criticism of those whose principal criterion for the acceptability of such proceedings is whether they conform to the ideal of a domestic adversarial court proceeding and whose only source of legitimacy is the state” (Byrnes & Simm, 2019). Complaining about due process in these proceedings overlooks the novelty of these institutions: “Compliance or not with the formalistic requirement of court proceedings fails to appreciate the other functions that such tribunals can perform even if they can never point to the state as a source of authority because they are not established by state” (Byrnes & Simm, 2019). In short, the normative objections to the nature of these tribunals is the result of a lack of legal imagination on the part of critics as well as an over-reliance on the hegemony of the post-Westphalian sovereign state. In their view, these institutions represent a new form of international law, a populist model based in the “will of the people”.

While Byrnes and Sim’s defense of these tribunals has some philosophical merit, from a sociolegal perspective they raise numerous questions. Why does this institution and its successors feel compelled to convene a “tribunal” with “witnesses” and “hearings” to reach a conclusion that was already reached by its members? Many of those involved in the Russell Tribunal were some of the best-known intellectuals in the western world who could have called attention to US atrocities in Vietnam through a variety of methods, such as protests, newspaper editorials, and disruptive action. What additional benefit comes from creating a body, labelling it a “tribunal”, and then consciously mimics the procedures that are considered essential to a legitimate tribunal according to most legal experts? Further, why disregard the procedural safeguards that are integral to these processes? In short, *pace* Byrnes and Sim, the objections of the critics of People’s Tribunals have merit and at the same time

raise an important question about the nature of these peculiar institutions (Byrnes & Simm, 2019). If they are going to frame their operations as somehow legal (and not simply moral or aesthetic) and gain the rhetorical gravitas we commonly grant legal institutions, it follows that they must be legal in some meaningful sense.

### The Legitimacy Gap as a Sociolegal Problem

The Russell Tribunal's legitimacy faces two different challenges: the positivist critique and the procedural one. It was illegitimate because it did not stem from the acts of sovereign states (De Gaulle), and it was illegitimate because it did not provide fair hearing for the accused (Miller). However, the two are not entirely independent from each other either from a sociolegal perspective or, I will argue, from a normative one. For these tribunals to achieve their goals: changing international policies through public persuasion, it is essential that the public support their findings. However, for self-styled tribunals, unlike other forms of public persuasion (such as protest), there are a specific set of behavioral expectations. Because they purport to speak as a legal institution and not simply the language of protest or social critique, they must assert their legitimacy through very specific discourses. That is to say that they must be perceived by their audience to be a properly formed and functioning *legal* body, which requires using specific forms of language and embodying certain practices. The tribunal members knew this – as Archibugi and Pease point out, “using judicial rhetoric, [the tribunal members] were able to adopt the reasoning of the weakest (the Vietnamese people), who had no resources of their own to devote to the dispute (Archibugi Daniele & Pease, 2018). That is to say that people's tribunals must cultivate a unique form of sociological legitimacy – the legitimacy specific to legal institutions and this presents unique sociolegal challenges and unique modes of interaction among the participants.

The concept of sociological legitimacy, rooted in Weber, conceives of legitimacy not as a normative problem (why is an institution legitimate?) but rather as a problem of collective opinion or action (why does the public perceive an institution as legitimate?) (Weber, 1978). To be legitimate, sociologically speaking, is to be able to shape collective activity when personal interest and a fear of sanction fails to motivate, to get the public to accept the claims and actions of an institution as largely “correct” and therefore to be followed. As Fallon puts it, “When legitimacy is measured in sociological terms, a constitutional regime, governmental institution, or official decision possess legitimacy in a *strong* sense insofar as the relevant public regards it as justified, appropriate, or otherwise deserving of support for reasons beyond fear of sanctions or mere hope for personal reward” (Fallon, 2005) As Hobbs points out, sociological legitimacy is particularly important for international institutions because they lack other tools to impose their will on a skeptical public. They have no police force or enforcement wing to carry out their demands (Hobbs, 2015). The fact that international institutions are so structurally weak (particularly those engaged in human rights and international humanitarian issues), their ability to function as legal institutions at all depends upon their ability to muster public support. Sociological legitimacy is crucial to the operation of these tribunals.

It is precisely because the status of people's tribunals is so precarious in the public eye that they must use any means available to convince a persuadable public of their authority to “rule” on their subject matter. What separates these tribunals from overt propaganda is precisely their claim to some kind of institutional authority but given their claim to be independent of traditional sources of legitimacy, they must find other means by which to assert their right to command obedience. As institutions, people's tribunals cannot refer to any documentary pedigree or to a constitutional *grundnorm* to justify their existence or bolster the authority of their findings. Further, their lack of enforcement power, including an inability to subpoena witnesses or make binding decisions has a significant impact on their authority. As a result, there is pressure to generate some type of legitimacy, some source that they can refer to marshal public support. Because of their lack of enforcement power, they cannot compel testimony from uncooperative witnesses, much less recalcitrant states.

Thus, the entire existence of these tribunals depends on their ability to find some alternative reservoir of validity. Previous institutions, such as revolutionary courts have claimed their right to rule by reference to revolutionary theories: the revolutionary courts of the Soviet Union and even the French

Republic each made appeal to “the People” in some form in order to justify their operations (Shapiro, 2002). (Even if the public did not support their actual decisions, they could refer to the inchoate notion of “the people” set out in radical theories to justify their actions.) On the other hand, the International Military Tribunal at Nuremberg’s (IMT) claims to legitimacy were unorthodox, the London Agreement referred to the “the interests of all the United Nations” and the unique atrocities committed by the Nazi government (the Moscow Declaration refers to “evidence of atrocities, massacres and cold-blooded mass executions” as ground for a tribunal), but the authority of the traditional nation-state to adjudicate criminality was unquestioned. Further, the Nuremberg tribunal was designed in extreme times where criminal prosecution followed by execution for the convicted seemed incomprehensibly merciful when compared to the wartime behavior of the defendants. And of course, even if it wasn’t created by the German government itself, the IMT was established by *states* (the victorious allied powers). Institutions without a traditional reservoir of legitimacy upon which to draw must cast about for something to give their proceedings and their findings the gravitas necessary to justify their program if only to themselves.

### Resolving the Legitimacy Gap

In part, convincing others of the legitimacy of a tribunal requires participants acting like the tribunal is legitimate. That is to say that tribunals that lack legitimacy must nonetheless act as though they were due all the respect granted to more conventional tribunals and bound by all traditional and procedural norms. This involves presenting oneself as legitimate in manner, dress, and speech – performing as though an institution were legitimate. As Yang (2025) has convincingly argued, different forms of legitimacy, sociological, normative, and political are intertwined and mutually reinforcing, including procedural justice (S. Yang, 2025). An outstanding version of such an approach in relation to the International Criminal Tribunal for Rwanda (ICTR) was set out by Steinlitz. Her dramaturgical analysis of the ICTR (rooted in the work of Goffman) invokes notions of an “international community” that undergirds the ICTR’s authority. The tribunal must present itself as a professional, sober body that merits respect from its audience – it must present a “front” to the public that eschews the emotional and at times disruptive nature of political protest (Goffman, 1959).

More substantially when performing legitimacy, it is essential that a tribunal enact safeguards to ensure that they are following procedural norms associated with a fair trial. While most of these are familiar to legal scholars, they include standards regarding the presentation of evidence, the right to counsel, and the right to question witnesses against a body. The Russell Tribunal’s primary flaw from the perspective of its sociological legitimacy was precisely this: they believed that the unique nature of the institution obviated a need for procedural safeguards. As we’ve seen, even political fellow travelers found this disturbing, and later tribunals sought to correct this. For example, the Permanent People’s Tribunal stipulates that “Any government, authority or private group which is being accused will be informed of the complaints or requests brought against it as soon as they have been declared admissible by the presidency Committee, or a decision been made to bring an action against it (Permanent People’s Tribunal, 2016). Participation will be possible at every stage of the proceedings. Even if there were a refusal to recognize the Tribunal’s competence every relevant act of the trial will be duly communicated” (Permanent People’s Tribunal, 2016). Similarly, the Ukraine People’s Tribunal stipulated that the defense will be entitled to counsel and “If the accused Party refuses to participate or chooses not to participate, the Court Secretariat will appoint *ex officio* a Defense Counsel to represent the accused Party” along with other recognized procedural safeguards (The Court, 2023). All these developments are not just norms associated with a fair trial they are tools for establishing sociological legitimacy – tools of persuasion aimed at a skeptical public.

In essence, the performance of legitimacy of an irregular tribunal both in the courtroom and in its intellectual infrastructure is a tool to establish sociological legitimacy for a body that cannot derive its authority from another source. That is to say that a tribunal that respects extant norms regarding international justice, including due process and fair representation among other things, can expect a much more sympathetic audience than other bodies, particularly among the elites who are more likely to be aligned with to the tribunal and play an inordinate role in shaping national policy (Saunders, 2022). The lesson of the Russell Tribunal is that a failure to consider these values undermines their

power in the global public sphere, and figures like Arthur Miller are apt to shun an irregular tribunal and reject its findings.

Of course, the line between judicial findings and public opinion is not a direct one. Even tribunals that operate under scrupulous procedural norms face a variety of challenges in shaping public opinion. As I have argued elsewhere, legal institutions, particularly those that attribute criminal responsibility to important political actors, are apt to face several challenges when they communicate their findings to the global public sphere (Fichtelberg, 2020a). Identity politics, a captured media, and an inability to get one's message heard by a distracted and at times passive global public present incredible challenges for international tribunals that wish to change their minds regarding human rights issues. The fact that *The New York Times* refused to describe the Russell Tribunal without placing the word "tribunal" in quotation marks shows the challenge that international courts face even in nonpartisan media. Regardless of these head winds, failing to present itself as a tribunal that comports to due process does not help such an institution court public opinion (Fichtelberg, 2020b).

Beyond serving as symbolic performances, these procedural practices may be understood as forms of institutional self-constitution. They not only communicate legitimacy externally but also they help produce legitimacy internally by allowing irregular tribunals to inhabit recognizable legal identities. Seen this way, procedural fairness in People's Tribunals is not simply borrowed mimicry of state justice, but part of a broader process through which alternative legal authority is constituted. This suggests that the distinction between "regular" and "irregular" justice may be less categorical than commonly assumed, resting instead on differing modalities through which legitimacy is generated.

## DISCUSSION

It is easy to understand why critics see people's tribunals as a sort of "kabuki justice" simply aping the turns and phrases of "real justice" but offering nothing of substance to international law and international politics. Since the beginning critics have heaped scorn on them for this very reason. But the various people's tribunals have sought to meet this challenge by in some ways mirroring traditional models of justice, embodying their norms and procedures while simultaneously challenging the states monopoly on law and justice. This development of post-Russell Tribunal irregular tribunals is significant for a variety of reasons, both sociolegal and normative. As Kelly (2025) has pointed out, "The degree to which a tribunal is accepted (1) by the public in the state where the atrocities occurred, (2) by the international community, (3) by the victims, and (4) by defendants, goes to the heart of whether that tribunal is deemed legitimate" (Kelly, 2025).

Moreover, there is legal precedent for thinking about the connection between procedural fairness and the legitimacy of international tribunals. In its first case, *Prosecutor v. Duško Tadić*, the International Criminal Tribunal for the Former Yugoslavia (ICTY) confronted the question of whether the tribunal had the legitimate authority to rule on Tadić's criminality. The technical question for the Appellate Court was whether the ICTY had been "established by law" as set out in Article 14 of the International Covenant on Civil and Political Rights. In this momentous opinion, the Chamber considered several grounds for rejecting Tadić's appeal, but of note for our purposes is the assertion that the term "established by law" can at least in part be answered by reference to the procedural fairness and competence of a legal body. "The important consideration in determining whether a tribunal has been 'established by law' is not whether it was pre-established or established for a specific purpose or situation; what is important is that it be set up by a competent organ in keeping with the relevant legal procedures, and should that it observes the requirements of procedural fairness" (*Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Prosecutor v. Dusko Tadic a/k/a "Dule") (ICTY, Appellate Chamber October 2, 1995)*, 1995) The Appellate Court's argument here is that the legitimacy of a tribunal is at least in part tied to its procedural fairness. Conversely, it follows that a body that was established by an ordinary national government that did not adhere to procedural norms was *ipso facto* illegitimate.

This leads back to the concept of sociological legitimacy and its relation to people's tribunals, both past and present. It is obvious that Rapp's Ukraine Tribunal sought to persuade a variety of different audiences regarding the criminality of the ongoing Ukraine war. It is also clear that Rapp and his

fellow jurists learned a key lesson from Russell's Vietnam tribunal: for an institution like this to have any sway over public opinion as a legal body, it must give the other side its due. As Rapp declared towards the close of his opinion: "While it will be for the Accused to raise defenses at trial, the Prosecution is required to seek and present evidence that is exculpatory as well as inculpatory, and the consideration of such evidence bears on our determination of whether the evidence as whole is sufficiently substantial to merit conformation of an indictment" (Bassiouni, 1996). Towards this end, they examined different speeches and claims offered to defend Russia's "special military operation". While this variant on trial *in absentia* is problematic from an American Constitutional perspective, for purposes of establishing the procedural fairness of the Ukraine Tribunal and arguing for its sociological legitimacy, these gestures are significant.

Pease and Archbugi have argued for a version of international law that they describe as "justice from below". As they put it "Governments are not the only player able to create a new judicial power and their defense of the Russell Tribunal is precisely the claim that it modeled a new form of international law divorced from the sovereign state (Archibugi Daniele & Pease, 2018). Undeniably they have a valid point that in an era of globalization, human rights law, and the proliferation of irregular tribunals, rooting international justice institutions within the framework of state sovereignty seems antiquated. Given the number of crimes pinned to the various states around the world, it is also morally indefensible. But developing a new international system based on an abstract concept of "the People" will only be legitimate and be seen as legitimate by these very people if the proponents of such trials think very hard about the ways that due process and fairness can be incorporated into the people's justice.

Ultimately, the significance of People's Tribunals lies not only in the judgments they render but also in what they reveal about law itself. They expose that legal authority does not rest exclusively on formal rights of sovereignty, but also on the social recognition, procedural credibility, and performances of justice that are capable of persuading relevant publics. As Sutherland (2024) argues, "Adherence to legal processes and standards arguably enhances the strength and legitimacy of efforts to advance accountability where formal processes and the international legal infrastructure fail" (Sutherland, 2024). In this sense, irregular tribunals illuminate a broader truth about international criminal justice: legitimacy is not merely possessed by institutions; it is continuously enacted. Recognizing this helps reposition People's Tribunals not as marginal curiosities, but as laboratories for thinking about the future of authority and justice beyond the state.

## CONCLUSION

This study concludes that Rapp's Ukraine Tribunal sought to persuade a variety of different audiences regarding the criminality of the ongoing Ukraine war. It is also clear that Rapp and his fellow jurists learned a key lesson from Russell's Vietnam tribunal: for an institution like this to have any sway over public opinion as a legal body, it must give the other side its due. As Rapp declared towards the close of his opinion: "While it will be for the Accused to raise defenses at trial, the Prosecution is required to seek and present evidence that is exculpatory as well as inculpatory, and the consideration of such evidence bears on our determination of whether the evidence as whole is sufficiently substantial to merit conformation of an indictment." Towards this end, they examined different speeches and claims offered to defend Russia's "special military operation". While this variant on trial *in absentia* is problematic from an American Constitutional perspective, for purposes of establishing the procedural fairness of the Ukraine Tribunal and arguing for its sociological legitimacy, these gestures are significant.

Pease and Archbugi state that "Governments are not the only player able to create a new judicial power" and their defense of the Russell Tribunal is precisely the claim that it modeled a new form of international law divorced from the sovereign state. Undeniably they have a valid point that in an era of globalization, human rights law, and the proliferation of irregular tribunals, rooting international justice institutions within the framework of state sovereignty seems antiquated. Given the number of crimes pinned to the various states around the world, it is also morally indefensible. But developing a new international system based on an abstract concept of "the People" will only be legitimate and be

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