The SAGE Handbook of Political Science

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Edited by: Dirk Berg-Schlosser, Bertrand Badie & Leonardo Morlino
Book Title: The SAGE Handbook of Political Science
Chapter Title: "Legitimacy and Legitimation"
Pub. Date: 2020
Access Date: April 3, 2020
Publishing Company: SAGE Publications Ltd
City: 55 City Road
Print ISBN: 9781526459558
Online ISBN: 9781529714333
DOI: http://dx.doi.org/10.4135/9781529714333.n53
Print pages: 833-851

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Hans-Joachim Lauth

Introduction and Key Concepts

The concept of political legitimacy is of key importance to political science. Beetham (1991: 41) called it ‘the central issue in social and political theory'. There are two basic questions associated with it: why *should* people obey their rulers, and why *do* people obey a particular political system? These two questions need two different types of answer, which has given rise to two distinct strands of research. A first step in explaining these two variant approaches is to distinguish between the concepts of legitimacy and legitimation. While *legitimacy* is a normative concept that evaluates grounds for acknowledging the authority of political systems or regimes, rules of power and the actions of rulers, *legitimation* or *belief in legitimacy* is an empirical concept that describes, rather than evaluates, the mechanisms by which a regime's authority is, or comes to be, perceived as justified by its citizens. Hence, a dictatorship can possess legitimation despite lacking legitimacy from a normative perspective. Although these approaches are sometimes said to reflect a shift from philosophy to sociology (Heywood, 2013: 81), and with it a shift from legitimacy to legitimation, it can be shown that both approaches remain current and operate in parallel.

The concept of legitimacy traces its origins back to the Latin ‘legitimus’ or ‘legitimare', meaning ‘rightfulness', which thus only captures one aspect of the modern conception. The concept of legitimation/legitimization also derives from this Latin term, but diverges still further because it implies a *process*. Let us begin here by considering Max Weber's seminal discussion of legitimacy, in which he considers several key aspects linked to the maintenance and justification of political power. Weber (1921 [1978]) was one of the first to systematically explore the fact that regimes cannot sustain their rule over the long term solely on the basis of violence and repression, but require acceptance from those over whom they rule. Only if the principles upholding a regime's authority are shared by the people is that authority legitimate. Weber distinguishes three ideal types of legitimate authority: *traditional*, *charismatic* and *rational/legal*. These three types are empirically based on specific grounds of legitimation that are regarded positively by the governed subjects: specifically, esteem for traditional authority; captivation with a ruler's fascinating personality; or respect for the rational, legal basis underpinning a regime's rule. This typology does not make any normative judgements about the rightfulness of the regime. Rather, Weber seeks to explain the reasons why governed subjects accept and support a regime's authority.[1] He therefore consistently speaks of belief in the legitimacy of political authority or, more succinctly, of belief in legitimacy, which in this chapter I treat as synonymous with legitimation/legitimization. This understanding of legitimation sees it as a process, acknowledging that empirical attitudes change.

Weber regards the rational/legal type of authority as one of the defining characteristics of modern societies. We shall therefore consider it in more detail so as (inter alia) to clarify its relation to democratic legitimacy. Legal authority is closely linked to rule of law, but presupposes special qualifications that not every system of positive law will satisfy.

Legal authority is based on enacted laws obeyed by everyone; even a country's president is subject to the impersonal order (Weber, 1978: 217). Impersonal orders of this sort are obeyed because they are understood as an expression of rational authority. The fundamental categories of rational authority find their purest, ideal-typical form in bureaucracy, which is typified by a continuous, rule-bound, hierarchically ordered conduct, precisely delineated spheres of competence and clearly defined and regulated means of compulsion (Weber, 1978: 218). Weber emphasizes the importance of technical knowledge in bureaucratic administration – describing it as the feature which makes it specifically rational (Weber, 1978: 225) – and the universal application of bureaucratic procedures in everyday affairs (Weber, 1978: 220). This makes clear that acceptance is based primarily not on the enactment of laws and constitutions, but on the character of social orders and their rational procedures. Accordingly, Weber regards as merely relative the distinction between orders established

on the basis of agreement (i.e. democratically) and ones that are imposed (Weber, 1978: 37).[2]

For Weber, legal orders are fundamentally based on rationality: specifically, instrumental rationality rather than value-rationality. He is a proponent of legal positivism, which holds that no objective knowledge of moral values and norms is possible, and that law and morality should hence be considered independently (Baurmann, 1991: 113). In this tradition of jurisprudence, the source of legal norms is of secondary importance; the crucial point is that they conform to procedures. The key feature of a legal order is that it is an internally consistent, clearly structured system of rules, whose application in individual cases can be unambiguously deduced from abstract norms. The rules are universally and continuously valid; although they must be adapted to any changes in the environment, on the whole they remain fundamentally stable, so that their application remains calculable. The legal order is underpinned by the state's monopoly on force. Legal certainty must also be guaranteed, which is why modern legal systems need a highly professionalized jurisprudence that helps to systematize the law and ensure consistent legal interpretation.

It is not difficult to discern in these features the form of a formal constitutional state (*Rechtsstaat*), which is explicitly distinguished from a material constitutional state (Baurmann, 1991: 123). According to Weber, a ‘social law’ based on ethical postulates such as justice or human dignity would weaken the calculability of the law or even lead to wholly arbitrary, ‘irrational adjudication’ (Weber, 1978: 886). Thus, for Weber, the purpose of the system of positive law is not to safeguard human rights or justice; rather, its central function is to provide a secure legal grounding for capitalism. The principle of legal authority eschews any normative foundation: ‘Today the most common form of legitimacy is the belief in legality, compliance with enactments which are *formally* correct and which have been made in the accustomed manner’ (Weber, 1978: 37). This is legitimation by way of procedures, an idea later taken up by Luhmann (1989), albeit reinterpreted in terms of decision procedures.[3] These procedures are not necessarily democratic, but correspond to the principles enshrined in the constitution or fundamental legal order, which could also be, say, dynastic. This entails that law in the sense of legal authority can serve to legitimize both democratic and authoritarian regimes. As a result of this ambivalence, most political theorists regard it as insufficient to establish legitimacy solely on the basis of law (belief in legality), even with the special qualification of a formal *Rechtsstaat*.

A strict distinction must be drawn between the legality principle and the Rawlsian constitutionality principle. Rawls’ proposed ‘liberal principle of legitimacy’ is based on a specific conception of constitutionality: ‘political power is legitimate only when it is exercised in accordance with a constitution (written or unwritten) the essentials of which all citizens, as reasonable and rational, can endorse in the light of their common human reason’ (Rawls, 2001: 41). A legitimate constitution not only rests on the rationality principle, but requires the endorsement of all citizens. This endorsement is in turn qualified, with the citizens required to exhibit something akin to Dahl's ‘enlightened understanding’ (Dahl, 1989). This makes clear that for Rawls, the legitimation of a state's authority requires a democratic regime form.

Legitimacy is distinguished not just from the concept of legality, but also from that of stability. As Beetham correctly notes, the characteristics of legitimacy should not be conflated with its consequences.[4] It can be assumed (and has been empirically tested) that the stronger the belief in legitimacy, the more stable a regime will be. But stability also depends on other factors, such as the general economic and social situation or alternatives to the current regime, while a legitimation gap can be counteracted at least temporarily by other mechanisms, such as repression. Stability could, therefore, be the result of non-normative acceptance, which is distinct from legitimation. However, following Weber, belief in legitimacy is regarded as a significant contributor to the stability of political systems. Other functions are also attributed to it: for example, Scharpf (2004: 3) notes that the greater the compliance of citizens, the less disruption there will be and hence the more efficiently a government can operate: ‘Legitimacy is, therefore, the functional prerequisite for governments which aim to be simultaneously effective and liberal.'[5]

The two fundamental forms described here correspond to the terms ‘legitimacy’ and ‘legitimation’ (Garzón

Valdés, 1988). Legitimacy is a normative category, referring to the justification of norms and the rightfulness of regimes. The exercise of political authority and state power is justified if there are good reasons for it. Legitimation – referred to by Weber as 'belief in legitimacy' and strictly distinguished from a normative sense – refers to *belief* in the rightfulness of a regime. It is thus a descriptive category, which assesses the extent to which rulers are accepted by the ruled. Do citizens believe in the rightfulness of their rulers' authority? This idea is not linked to any universal normative standard: a triumphant dictator is just as capable of experiencing legitimation or acceptance as a traditional monarchy or constitutional democracy.

The term 'legitimation' will henceforth be used to refer to the second idea. It will be treated as synonymous with 'legitimization', with both terms describing the process or act of providing legitimacy (Gaus, 2011: 4). The term 'legitimacy' is also used in this descriptive sense in the literature. However, in this chapter I shall reserve 'legitimacy' for the normative sense to make the distinction clearer and avoid further confusion. Alongside these two main variants, some prominent theories also add a third alternative to the mix.[6] Accordingly, legitimacy, trust and confidence must be clearly separated. Trust is not an expression of moral quality, but in its very essence refers to an interpersonal relationship (social trust). By contrast, the relationship between legitimation and trust is closely interwoven. This is particularly true when trust in people as representatives of political institutions is analysed. Here we can understand trust as an expression of legitimation. On the other hand, it seems difficult to speak of social trust in a type of regime. However, by way of contrast with the first form of trust, which is concrete and personalized, it is conceivable that there could be abstract institutional trust, which could also exist towards courts or the civil service. This notion of institutional-based trust is in essence very similar to the concept of 'system trust' (Luhmann, 1979) or 'societal trust'. The term 'confidence' places the emphasis on the viability and functionality of organizations and institutions.

Legitimacy – The Normative Approach

In recent years, the question of the legitimacy of political action has been taken up with increasing intensity and for a variety of different reasons. On the traditional view, political science is chiefly concerned with the legitimacy of power/authority and different types of government/state (Connolly, 1984; Green, 1988).[7] Who can legitimately exercise power, including the use of coercion, and morally compel individuals to obey; what are the limits to power? While political philosophy formerly concentrated on the justification of state power in general, finer distinctions are now drawn according to different regime types and systems of rule. Researchers have analysed the conditions for legitimate authority. Work in recent decades has increasingly incorporated the supranational level: the European Union and advancing European integration, international organizations and global governance structures. At the same time, attention has also been directed to the inner workings of political systems, drawing distinctions between specific subdomains and individual decisions.

What provides normative justification for political authority? Political philosophers have argued for various different answers (Green, 1988): justice, stability and security, peacekeeping, promotion of the common good, constitutional protection of individual rights. In recent debates, most of these goals are seen as integrally linked to the democratic regime type, which provides the fundamental argument to justify state authority: participatory processes that make citizens the ultimate authors of their own laws and guarantee them the ability to participate in the exercise of power and decision-making. Procedural rules concerning both participation and rule of law are seen as key foundations for legitimizing political authority. This creates pressure to justify even individual decisions; democracy is a political system in which important (non-)decisions must always be justified.

In relation to democratic legitimacy, two principles are of particular significance: responsibility and responsiveness. The former is a measure of how responsibly decisions are taken: are common interests, possible consequences and fundamental rights taken into consideration? Weighing up such factors can lead to a decision that goes against prevailing majority opinion. The second principle, responsiveness to citizens' preferences,

is intended to prevent precisely this possibility. It requires that a government's actions are suitably reflective of citizens' preferences.[8] However, if these preferences go against the fundamental normative underpinnings of democracy – for example, if they would involve discriminating against minorities – they cannot be satisfied without violating the principle of responsibility. This potential for conflict between the principles shows the difficulty of setting a generally recognized standard for the legitimacy of democratic authority. The same conflict can be seen elsewhere in the dispute over constitutionalism, in particular concerning the role of a supreme court: should the supreme court protect constitutional rights, or should this be left to the people as the democratic sovereign?

The extensive scope of these requirements for justification makes the standards for legitimation far more stringent and complex than in the three ideal types of Weberian provenance. In the contemporary debate, democracy serves as a normative benchmark or gold standard for the legitimacy of political authority. However, there are significant differences in how democracy is conceived (Peter, 2008, 2017), most crucially with respect to the status of participatory processes. Following Habermas (1996) and Bohman and Rehg (1997), forms of deliberative democracy are ascribed greater legitimacy than conventional representative democracy. This debate does not concern itself with the legitimacy of individual political decisions, but rather with whether the procedures used in such decisions are suitable or could be improved. One particular focus is innovating new democratic procedures, a discussion which also draws on empirical research. Other topics that are addressed are the limits of representative democracy and the opportunities offered by direct democracy and related deliberative procedures. Brexit is a good example of a case where procedures, including the conduct of the referendum itself, did not lead optimally to a deliberative solution. It is generally claimed that improving participatory and decision-making procedures increases the quality of decisions. Deliberative democracy combines the idea of public reason with the element of democratic participation.

Although the legitimacy of individual decisions is not usually questioned by public actors in democracies, there are exceptions to this rule. One such exception is the principle of civil disobedience, according to which illegal actions can be justified (Brownlee, 2012; Perry, 2013). This idea underscores a fundamental tension between legitimacy and legality: decisions that were properly reached in accordance with the law can be ruled illegitimate on the basis of overriding norms, which must themselves be compatible with democracy and cannot be ideologically rooted in anti-democratic values. Since democratic decisions can generally be revised by democratic means, civil disobedience must be justified by the claim that revising the decision by these means would take an unacceptably long time given the pressing nature of the issue.

Examples of civil disobedience include protests against the introduction of nuclear power, which was regarded as posing incalculable risks with extremely long-term consequences, and the NATO Double-Track Decision in the early 1980s, or the more recent phenomenon of 'church asylum' where churches offer sanctuary to people threatened with deportation because they believe their cases have not been properly considered; if all legal remedies have been exhausted or the deportation is scheduled to take place before an appeal has concluded, civil disobedience is regarded as the only alternative. The aim of civil disobedience is not to resist democracy, but to improve its procedures and decisions.

Another, competing principle for evaluating the legitimacy of political systems appeals to the concept of justice (Buchanan, 2002): only political systems that are also just can legitimately exercise power, and since democracies are not automatically just, their legitimacy must also be scrutinized. Rawls (1993), by contrast, opposes conflating the concepts of authority and justice, arguing that the exercise of political power can be unjust yet legitimate, though the illegitimate exercise of power cannot be just. Regardless of how the relation between justice and legitimacy is conceived, the definition of justice itself remains a subject of dispute. Ultimately, basing legitimacy on justice would require combining a procedural with a substantive understanding of democracy. But there are good reasons for rejecting a substantive conception, according to which the quality or even the existence of a democracy can be discerned from its performance. Ultimately, what performance is called for is a matter for the democratic sovereign, meaning the outcome will be historically contingent and impossible to formulate in universal terms. By contrast, suitable procedures can be expressed in universal form,

though it should be noted that it is not only the procedures themselves that are relevant, but also the possibility of using them appropriately. They are thus linked not just to certain minimum social standards, but also to cognitive capacities (‘enlightened understanding'; Dahl, 1989: 307). A number of other conditions and capacities have also been considered in studies on innovative procedures in democracies (Mayne and Geissel, 2018).

Another intriguing question concerns the legitimacy of the European Union and its predecessors (Schmidt, 2013). How is the union legitimized if – as it is claimed – it lacks adequate democratic legitimacy? Various arguments have been made for this lack of legitimacy. One argument points to the long legitimation chains: members of key decision-making bodies such as the European Commission, European Court of Justice and European Central Bank are not directly elected, despite having more powers than the directly elected European Parliament. Critics also claim that there is an imbalance in favour of the executive, and that there is no collective European *demos* as the democratic sovereign. Although the Treaty of Lisbon has made the EU more democratic, many of the criticisms remain.

Another alternative to legitimation based on democratic procedures is legitimation based on utilitarian considerations. On this view, it is not the input processes that legitimize the political system of the EU but its performance, that is, the output side. Fritz Scharpf (2004) takes a position of this sort in his evaluation of the legitimacy of European integration, which he believes is not guaranteed on the input side. However, he also considers the possibility for output-based legitimacy in the EU to be limited to allocation decisions that satisfy the Pareto criterion: decisions that benefit one party at the expense of another lack legitimacy in the absence of a solidary community (though such decisions are, he concedes, unlikely given that the EU's scope for decision-making is constrained by many layers of checks and balances[9]). Others, however, are critical of the possibility of utilitarian justification even in the case of solidary national communities. Peter (2017) summarizes the argument thus: ‘Rawls (1971: 175f.) and Jeremy Waldron (1987: 143f.) object that the utilitarian approach will ultimately only convince those who stand to benefit from the felicific calculus, and that it lacks an argument to convince those who stand to lose.'

There is also the question of whether the EU needs the same level of legitimacy as nation-states. Scharpf (2004) makes the case for a notion of gradated legitimacy, whereby the level of required legitimacy depends on the depth and significance of the decision in question. In positive-sum games with distribution conflicts or pure coordination games, the need for legitimacy is, he says, significantly lower than when dealing with zero-sum conflicts where the solution that satisfies the interest of one group will be at the expense of another. This criterion is particularly relevant to evaluating the legitimacy of international institutions.

In recent years, the scope of the debate about legitimacy has expanded to include the international order (Hurrelmann et al., 2007; Zaum, 2013). What legitimacy is possessed by the United Nations and its bodies, or by special organizations such as the IMF? What decisions, and with what consequences, can be legitimized? How far can such institutions intervene in the sovereignty of national governments (e.g. by imposing austerity programmes)? At a very general level, there is the question of what form the international order should take: should it be conceived as a global state, and/or what minimum democratic requirements should be established (Höffe, 2007; Nullmeier and Pritzlaff, 2010)? Many commentators are extremely sceptical of the possibility of an international or even global democracy, as there is no *demos* with a well-defined collective identity.[10] In the absence of such an identity, however, it is difficult to acceptably set rules that impose special sacrifices on individual states or treat them worse than others. This does not exclude the possibility of international solidarity agreements, commendable examples of which exist between Scandinavian states and poorer countries. However, these agreements are not based on a communicatively formed global society, but on voluntary national decisions underpinned by public discourse in the countries in question; the legitimacy of governance at a level beyond the nation-state requires an influx of legitimacy from national societies. As well as governments, civil society organizations can also play a key role in this transformation. Hence, the legitimacy of international political structures and decisions remains closely interwoven with the national sphere.

This is also evident in discussions on specific questions of international policy, which always touch on issues of legitimacy. When is it right or necessary to intervene by force in another country (Merkel and Grimm, 2009)? What kinds of emergency can only be dealt with in this way without incalculable risks? Questions are also asked about the economic activities of individual countries: how justified is the considerable global variation in resource consumption (Dobson, 1999; Agyeman et al., 2002)? The many different issues linked to sustainability can be boiled down to a single question: is economic activity at the expense of other nations and/or future generations normatively justified? As these questions show, it is not just procedures but also concrete decisions whose legitimacy comes in for scrutiny; there has been a noticeable expansion in the focus of the normative legitimacy debate.

A comparison of normative justificatory structures reveals a pattern that is also observable in the development of human rights. Originally, security and the guarantee of civil liberties were regarded as the central criterion of legitimacy; rights to political participation then became increasingly important, as can be seen in the normative standard of democratic authority; this was followed by a gradual increase in the significance of social rights, the interpretation of which is reflected in the wide-ranging discussion on justice and inclusion as foundations of legitimacy. Internationally, the progression through these three stages has been accompanied by a growth in the importance of human rights in general. Protecting human rights is now used to justify intervening in states' domestic affairs, thus imposing limits on the centuries-old principle of the inviolability of national sovereignty.

Research on Legitimation

Concepts

Alongside studies of normative justificatory procedures, another strand that has established itself in political science is empirical research on legitimation. This empirical research investigates the legitimation possessed by the rulers in a political system, looking at the factors that ground belief in legitimacy and support for regimes. It focuses on different sources of legitimation and their ability to sustain stable systems of rule. Within political science, this strand of research is situated in the fields of political culture research and political sociology. The focal point is the relation between rulers and ruled, and the extent to which the latter regard the former's authority as justified. This issue is relevant to all regime types and has been studied in relation to both democracies and autocracies. Even more so than the normative variant, this strand of research focuses on the stability of political systems. A high level of belief in legitimacy or legitimation is seen as key to stability.

Originally, the empirical frame of reference for studies on legitimation mainly comprised democracies. The collapse of various democracies in the first and second waves of democratization made clear the importance of the role played by citizens' attitudes. If they lack democratic beliefs or do not support the political system and its actors, there is a danger that democracy will collapse. This line of research was also motivated by the increasing democratization of states in the third wave. The focus on democracies has impacted significantly on the selection of investigative criteria. The sources of legitimation described by Weber have been restructured and expanded, with citizens' attitudes becoming central objects of study. Almond and Verba (1965) investigated different objects and modes of political orientation. They began by distinguishing four objects of political orientation: the political system as a whole and its fundamental values and institutions; participatory processes (input objects); the performance of the political system (output objects); and the self as political actor. The attitudes towards these objects are broken down into cognitive, affective and evaluative modes of orientation. By combining these different dimensions, Almond and Verba categorized different types of political cultures, with the mixed type of civic culture considered the most conducive to democracy. In a civic culture, the citizens' attitudes and value orientation help support the functioning and stability of a democracy. The study has a clear functional emphasis, with the congruence of political culture and political structure regarded as critical

for the stability of a political system. Lipset (1960) also considers the issue of stability, but with the focus on legitimation and effectiveness now taking stronger account of economic performance.

Building on these ideas, mainstream research follows David Easton's 1965 theory that the degree of legitimation depends on how closely the political order and the values inherent to it correspond to citizens' personal moral principles and beliefs. Another of Easton's ideas that has proved influential is his distinction between diffuse support, which is based on approval of political authorities' fundamental principles, and specific support, which is based on these authorities' performance. This model continues to be applied in empirical research to this day, though it has been supplemented by additional distinctions (Easton, 1975). Norris (1999) developed a fivefold classification of political support, which draws a line between political community, regime principles, regime performance, regime institutions and political actors. This approach enables a systematic analysis of different functional areas. Fuchs (2007) established a hierarchical model of democratic orientations towards regime type/democratic system, type of democratic regime/governmental system and specific governments. This differentiation is helpful in identifying the level of support. Distrusting government officials while believing that it is right to obey the state is not, as McMann (2016: 555) suggests, evidence that trust and legitimation are distinct, but rather that different political objects can achieve divergent degrees of support.

Weatherford (1992) developed a broad theory of legitimacy orientations, which includes views from 'above' and 'below' and attempts to integrate the micro and macro levels of investigation. However, this distinction only applies to the object level (political versus personal). The data is still based on surveys. Gilley (2006) focuses only on the 'diffuse' support dimension by measuring state legitimacy. He excludes government and other actors from the analysis. His theory distinguishes three subtypes of legitimacy. While the first two cover the legitimacy of the legal and normative side (justification), the third subtype (act of consent) concerns the degree of mere acceptance. In addition to surveys, this theory also includes patterns of behaviour.

According to the examples, the following categories of items are typically distinguished: at the level of the general political system, identification with the political community, support for central democratic values (such as freedom, equality and the separation of powers); at the level of actors and performance, trust or confidence in key political actors (government, parliament, parties) and state institutions (civil service, courts, military). When measuring these attitudes, an attempt is made to separate general trust in political institutions from specific trust based on concrete everyday practice, though clearly this categorical distinction is not always straightforward to define. It might make sense to distinguish between concrete trust in political organizations (parties, government) represented by public persons as an expression of specific support and abstract trust in 'faceless' organizations (courts, civil service) or institutions as an expression of diffuse support. Attitudes are measured using representative surveys. There are now many datasets that also record developments in support over time.[11] The analysis of legitimation in these studies appears to reduce it to the factor of support, though different subtypes of support are distinguished (Klingemann, 1999). One key assumption is that deep-rooted democratic values are more important for stability than high approval based on output performance, which can rapidly change.

Despite the widespread use and high acceptance of survey research, the method has been subjected to a range of criticisms that put the validity of the measurements into question. They include the difficulty of precisely measuring short-term attitudes and long-term beliefs, and of controlling for distortion resulting from respondents' seeing things in accordance with the desires and expectations around them.[12] There are also a number of pragmatic issues, such as how to properly translate question items into different cultural contexts or how to actually achieve representativity, as well as criticisms at the level of principle concerning the closed nature of the questionnaires and the neglect of historical context:

> In survey research, respondents only react to stimuli provided by questionnaires that offer respon-

> dents a preselection of political institutions to be assessed and of evaluative benchmarks to be commented on. This approach is unlikely to shed much light on the actual contours of legitimacy beliefs. Even more importantly, it neglects the context-bound nature of legitimation processes. (Hurrelmann et al., 2005: 4)

Another problem consists in the selection of items and categories which are useful in comparative research. Findings may therefore be inaccurate because they ignore aspects relevant to legitimization in one case, while not in others. The criteria by which governments are legitimated may vary on a case by case basis.[13] Therefore, to obtain a full picture of a single case, it is necessary to include all relevant aspects of legitimation in the study.

One contrasting or complementary way of measuring political support or its decline consists in documenting political action such as protest. A distinction is drawn between active protest, expressed in conventional and unconventional forms of participation, and passive protest, such as voter abstention (Rucht et al., 1999).[14] Active protest involves the dimension of action, thus expanding the scope of investigation. Through participatory behaviours, citizens can withdraw legitimation both from political actors and their decisions as well as from the current form or general idea of democracy. The same applies to the passive behaviour of non-voting, the study of which relies more strongly on survey research, though it needs to be assessed on a case by case basis whether non-voting is actually a form of protest and loss of legitimation, or whether there are other reasons (e.g. because it is expected that the person's preferred party will win, or due to generalized political apathy). Other categories of actions and behaviour highlight support measures such as tax payments or legal compliance, which are often measured by the degree of corruption. Nearly all these studies of political actions underscore the relevance of social interaction and collective action. They should be understood as calling for the inclusion of the intermediary level.

This short overview underscores one problem which results from the different definitions. It is not always clear whether legitimation and support or mere acceptance are being measured. While the subjects are always the citizens, the selection of objects varies significantly (state, regime type, government, parties, civil service, courts, etc.), as do other aspects (trust, alienation, accountability, responsiveness, procedural and distributive fairness, efficacy and efficiency). Likewise, some concepts conflate the measurement of legitimacy with the identification of its causes and consequences. Sound empirical research would need to analyse orientations (attitudes at the micro level) as well as patterns of behaviour at the meso level. One should add, however, a further intermediate dimension, which is embedded in the public debate that is often dominated by the media. Citizens' evaluations are always shaped by the framing of public arguments and issues. Thus, it is possible that very similar performances by governments will be judged differently depending on the communicative framing. In addition to different public relations strategies, the credibility of the actors (messengers) and the utility of the ideas play a significant role in this process. The degree of legitimacy thus also depends significantly on the ability of political elites or the opposition to introduce their own legitimacy criteria into the communication process. The analysis of legitimation is therefore always an empirical–hermeneutical task, too.

Strategies of Legitimation

Forms of legitimation can vary over the course of time and between different cases. This raises some crucial questions: Why do the findings differ? What reasons can be adduced for this variation? What effects does a loss or crisis of legitimation have on a political system, and how can such a loss or crisis be prevented? These questions are interrelated. For example, actions taken to prevent legitimation crises are also factors that help to explain the variation in the findings. Causes can be broken down into actor-specific factors (which usually form part of legitimation strategies) and structural, systematic factors. In the former case, the relevant

legitimation strategies need to be identified and investigated. What strategies are distinguished and are they dependent on regime type? Let us first consider this aspect, which leads on to the idea of the politics of legitimacy and prompts the general question: 'What are governments doing when they spend time, resources and energy legitimating themselves?' (Barker, 2001: 2). Barker is assuming here that legitimation begins with rulers' legitimation of themselves, but in democracies the chain of legitimation starts from below. Accordingly, we can ask: what can a government do to generate support and thus legitimation? Following Nullmeier et al. (2012: 24), I understand the *politics of legitimacy* as all efforts that are undertaken to produce and secure the normative worthiness of a political order, decision or actor to be recognized. These efforts are distinguished from those that are being directed purely at generating acceptance with no reference to normativity.

A *first* legitimation strategy in democracies is based on performance. Lipset (1960: 77) argues that political systems can actively contribute to their being recognized as legitimate. He believes that the political system's performance plays a key role: the more highly citizens rate the output, the higher their specific support. The longer this specific support lasts, the more likely it is to transform into robust, diffuse support: West Germany in the 1950s and 1960s is one example of such a transformation. Legitimation qua output or performance is in principle also possible in authoritarian regimes, but in democracies this legitimation strategy utilizes the democratic principle of responsiveness, whereby citizens view outcomes more positively the more closely they correspond to their preferences. This brings about an alignment between the moral principles and values of citizens and rulers. Political parties attempt to formulate policies that reflect citizens' preferences. Elections are the true testing grounds for these efforts to bolster legitimation; the success of these efforts is measured by the election results and turnout, though the latter can be distorted by various factors (such as compulsory voting).

A *second* strategy is based on the appeal of political actors, and is distantly related to notions of charismatic authority. Surveys of politicians' popularity attempt to measure this aspect, though it is difficult to predict what factors will affect popularity ratings; even scandals do not always have a negative effect, but can actually increase approval. However, falling approval ratings are often attributed to politicians. Anti-politician attitudes are based on a negative view of politicians' conduct and character; they are seen as only interested in looking after themselves and their careers.

A *third* variant is institutional legitimation strategies, by means of which changes are made to a political system's institutional framework. Such strategies can be applied to various building blocks of democracy: for example, opportunities for participation can be increased by introducing direct democracy procedures, the political process can be made more transparent and open to scrutiny, or quotas can be used to address issues of equality. The use of mediation and other deliberative procedures also falls within the scope of these strategies.

A *fourth* legitimation strategy is based in the realm of political discourse and relies on a government's capacity for communication: not just letting the public know what it is doing, but providing comprehensible justifications for its decisions, either by drawing on existing normative standards or else by reinterpreting or replacing them. This is not a simple strategy, since in pluralistic media landscapes the government does not have a dominant role and must compete against alternative narratives. Coming across too slick, by acting in a way that bears the clear hallmark of spin doctors, can actually prove counterproductive as it can damage the credibility of politics. The growth of social media is also making it increasingly hard to manage public perception. It seems easier to spread fake news and mistrust than nuanced, rational arguments.

A final category that should be mentioned is symbolic politics, which can arouse or reinforce positive attitudes. Little research has been carried out on this category; the studies that do exist are primarily in the fields of sociology and ethnology (Schlichte, 2018).

Autocracies also make use of a diverse array of legitimation strategies. One reason for this is that they lack democracy as a key normative source of legitimacy, and thus need to draw on many different sources to achieve legitimation (Burnell, 2006; Gerschewski, 2013). It should be noted that although repression and other coercive measures can contribute to stability, they are not forms of legitimation: 'the acceptance of a justification does not count if the acceptance itself is produced by the coercive power which is supposedly being justified' (Williams, 2005: 6). In his analysis of autocracies' stabilization mechanisms, Gerschewski (2013) specifically notes the wide range of legitimation strategies that are used alongside measures such as repression and co-option. These legitimation strategies are mainly structured around categories of diffuse and specific support. Specific support is operationalized primarily in terms of economic and social indicators, as well as the aspects of corruption, law and order and quality of bureaucracy. Law is interpreted with a focus on its contribution to domestic security; its other functions and qualities are ignored. The law thus plays only a limited role in the legitimation of authoritarian regimes, even though they are structured by legal systems and despite the centrality of legal authority in Weber's (1921 [1978]) account of 'types of legitimate domination'.

Unlike in democracies, autocracies' legitimation strategies are strongly tied to the type of autocracy in question. Classifications of autocratic systems of rule (or dictatorships) need to distinguish between *authoritarian* and *totalitarian* regimes, since the two types are based on different fundamental principles that mean it is not possible to regard one 'merely' as a subtype of the other.[15] One key strategy of totalitarian regimes is to legitimize their authority through the use of ideologies; these ideologies can be fascist/National Socialist, communist or theocratic, according to the nature of the regime in question. By contrast with the communicative strategies used in democracies, totalitarian regimes operate with methods of indoctrination and manipulation.

There are also subtypes of autocratic regime with specific legitimation strategies. Modernizing regimes base their legitimation on their output performance; military regimes on creating security and order; dynastic regimes on the legitimation patterns of traditional authority; post-colonial dictatorships and one-party regimes on their performance in the war for liberation or on claims that they are warding off imperialist domination or some other external threat. Individuals, such as Fidel Castro, are also able to draw on charismatic resources. Personality cults, by contrast, are an institutionalized form of charismatic authority that go to great lengths in trying to imitate the real thing (as seen, for example, in North Korea). Due to the rising global acceptance of democracy as a system of rule, authoritarian governments imitate democratic elements (electoral autocracies or competitive authoritarianism: Schedler, 2006; Bogaards and Elischer, 2015) or even attempt a redefinition that presents their own authoritarian regime as the true democracy.[16] In some of these forms of legitimation, a significant role is played by the use of symbols and national myths. Dukalskis and Gerschewski (2017) argue that depoliticization measures should also be understood as legitimation strategies, but this is unpersuasive; such measures are clear-cut cases of attempts to generate non-normative acceptance.

The main way in which authoritarian regimes can legitimize themselves based on what Weber called *legal authority* is by reference to a specific legal structure: the formal constitutional state. Historical examples of this are Prussia or the German Empire, while a modern-day example is Singapore, though these regimes also made or make reference to their modernizing reforms. Other legal structures can also serve in various ways to support and legitimize authoritarian regimes. One strategy seeks to win support from elites who benefit from flawed constitutional states or hybrid legal systems. Perverting the rule of law through corruption, clientelism and state capture can provide a stabilization mechanism specifically geared towards regime-supporting elites, who are more important for stability in autocracies than in democracies.

Another legally based legitimation strategy tries to win support from other sections of the population by explicitly utilizing traditional systems of norms and rules that enjoy high acceptance. Using these two categories could also help to give structure to the diverse findings in the context of legal pluralism (Shah, 2014). Empirical research on the dynamics and stability of authoritarian regimes should take greater account of these

multilayered, formal and informal interactions between law and governance (Lauth, 2017).

This brief outline of legitimation strategies in autocracies has shown that these regimes attempt to legitimize themselves by a diverse range of different means, since they lack democracies' fundamental input legitimation. The considerable effort autocracies put into legitimizing themselves further underscores the importance of legitimation in order to maintain power. Empirical studies of legitimation in democracies and autocracies concentrate on different aspects. Research in autocracies is less able to rely on survey methods than comparable studies in democracies and also refers to legitimation strategies that capture different groups: they are not only directed at all citizens but also at regime-supporting elites.

To respond to the diverse range of legitimation strategies found in different types of regimes, it is necessary to draw on an equally diverse methodological repertoire that goes far beyond the methods used in traditional research on legitimation in democracies: first, inductive survey approaches; second, discourse analysis methods, for studying public communication; third, methods that take account of the dimension of action, which allows the empirical legitimacy puzzle to be resolved (Booth and Seligson, 2009).

Legitimation Crises in Democracies

Although nowadays autocratic regimes generally need to compensate for a legitimacy deficit that does not affect democracies, it is democratic regimes that appear to be particularly prone to legitimation crises. There is a wealth of literature on legitimation crises in democracies. Two fundamental patterns can be distinguished, both of which are primarily based on systemic factors and can manifest in a variety of forms. First, the problem is seen in the excessive expectations that democracy itself generates (King, 1975; Rose, 1980). During election campaigns, parties attempt to outdo each other with promises that, once in government, they can only deliver with difficulty or by taking on ever increasing debts. At the same time, citizens expect more and more of the political system, and it becomes less and less possible to satisfy these expectations. The result is an immanent legitimation crisis. Second, legitimation crises are understood as expressions of capitalist dynamics (Habermas, 1973). According to this view, in order to maintain acceptance from citizens a political system must make concessions to them, most notably by expanding the welfare state. However, this curbs the free market and redirects profit from companies to the state, which dampens capitalist dynamism. But in the face of growing pressure from globalization, this dynamism needs to be sustained, which in turn forces cuts in state benefits. Over time, it becomes increasingly difficult for capitalist states or democracies to maintain a balance between these antagonistic interests, resulting in a legitimation crisis. In certain respects, Colin Crouch's theory of post-democracy can be seen as a continuation of this idea (Crouch, 2004).

No general empirical confirmation has yet been found for either of these two crisis theories. State spending generally remains high, even if small reductions have been made in some countries. Nor is a rejection of democracy discernible; rather, support for democracy as a general regime type is high in all established democracies. However, in many countries approval is dramatically lower when it comes to specific political institutions and actors. Recent decades have seen trust in governments and parliaments declining in many democracies. Election turnout has also fallen. Political parties have suffered a particularly sharp loss of trust, with membership numbers collapsing almost everywhere. This is undoubtedly a legitimation crisis.

In terms of political sociology, the loss of trust in politics is based on exogenous factors. Central to this crisis is the transformation of society, manifested in the breakdown of overarching unities and social differentiation. This dynamic is driven by economic factors that emerge from global markets, and is linked to a decline of traditional worldviews and shift in values that has been described – not without basis – as the 'silent revolution' (Inglehart, 1977). The consequences for the legitimation of democracies are considerable, complex and contradictory. Various different interpretations have been put forward. On Dalton and Welzel's (2014) positive

account, the result of the changes has been not a rejection of politics, but rather a move towards new forms of political participation. The authors argue that although there is a continued trend of dealignment and a decline in support for mainstream political parties, people are engaging in non-electoral forms of participation and assuming greater political responsibility. Other authors also allow for the possibility of a modified realignment.

Negative interpretations come in a number of variants. According to one of them, neoliberalism's permeation of society is reinforcing a focus on individual benefits and consumption. This is fuelling the above noted rise in expectations, but without people being willing to contribute themselves (something known as the free-rider problem). Another variant holds that in an increasingly pluralistic society, individual groups are rarely able to satisfy their interests in undiluted form; in a culture of compromise, everyone is ultimately dissatisfied. What is interesting about this interpretation is that one of democracy's greatest achievements – resolving conflicting interests without violence by means of compromises – is now undergoing a negative reinterpretation that cannot be resolved within the system. The ancient cynical argument, which is undergoing something of a revival, runs along similar lines. Politicians are now commonly lumped together as a self-interested political class that exists separately from ordinary people (Allen and Cairney, 2017). The difficulty of finding adequate political solutions in globalized contexts is conceived in terms of the ineffectiveness of this caste. There is widespread discontent with the transformation of society, which is understood as the result of failed politics. Visions of the future therefore reach back to the national past, in line with the programmes of right-wing populist parties, which are regarded as a clear expression of the political system's legitimation problems.

What all this makes clear is that modern democracies face myriad legitimation problems that are difficult to resolve, for two main reasons: first, because they are rooted in systemic, structural factors that can only be changed slowly, if at all, by political means; second, because they are based on different constructions of social reality that it is increasingly difficult to mediate between, as evidenced by the increasing polarization of political culture in countries such as the UK and, especially, the United States. Though it is not possible to explore this topic in depth here, it is clear that there remains a pressing need for research on the legitimacy of political systems. Moreover, there has thus far been no discussion of what happens if the legitimation problems persist or grow. Although some plausible, reasonable suggestions have been made based on facilitating and expanding political participation and education, it is an open question how effective these would be.

Conclusion: Open Questions and Avenues for Future Research

Research on legitimacy is divided into two main strands: a normative one based on the concept of legitimacy, and an empirical one based on the concept of legitimation. The normative strand is a vibrant field of study, whose scope has significantly broadened from the original focus on the justification of national governments to also include international institutions and actors. Furthermore, research on legitimacy is no longer confined to the political and social spheres, but also encompasses the capitalist economic order, its actors (banks, corporations and trusts) and their activities. Consequently, the number of grounds and motives for legitimacy has increased. Finer-grained distinctions are also drawn between different aspects of democracy – not just the overall concept but individual elements of it, such as participation, transparency and separation of powers, are used for purposes of justification.

The reasons for this vast proliferation may lie outside political science: it can perhaps be attributed to the rising standards of justification demanded in modern enlightened societies, which has given rise to a need for a more systematic approach to the topic of legitimacy. One idea that merits further exploration is that of gradated legitimacy, according to which standards for the justification and grounding of legitimacy become higher in proportion to the scope of an institution's or actor's powers and its ability to impose sanctions; nation-states would thus have to satisfy higher standards of justification than, say, international organizations. However, this idea cannot be used to develop a materially coherent theory of legitimacy, as it does not take account of

the logic of different fields. For example, ideas about how the market can be justified according to criteria of efficiency and effectiveness cannot simply be transposed to the political domain, although there are attempts to establish relations between different subsystems (for example, the social market economy or public and private regulation (Wolf et al., 2017)). It would therefore make sense to initially concentrate on developing a theory of political legitimacy, even if merely clarifying the concept 'political' would raise fresh controversies.

Extensive, wide-ranging work has also been carried out within the empirical strand of research on legitimation. Although this field was long dominated by Almond and Verba's theory of political culture, their approach has been supplemented by some significant additions, including more inductive survey methods (instruments with open questions), constructivist and discursive approaches specifically designed to identify patterns of legitimation in the public sphere, and perspectives and methods from media sociology. One productive approach is the research being carried out into the politics of legitimacy, which draws on some of the distinctions from the normative debate to identify the different legitimation strategies used in national and international contexts and in democracies and autocracies.

The discussion of the two strands should have made clear that, despite their difference of emphasis, they both involve empirical and normative elements. The normative debate reflects empirical changes, while the empirical studies focus on the normative grounds for recognizing political authority. Would it therefore make sense to try to integrate the two strands? This would certainly require more than simply adding them together. The impulse to integrate is inherent to politics itself: 'politics is a matter of establishing relations of justification in which those who were subjected to rule can be the justification authorities of this rule' (Forst, 2014: 674). It is not just philosophers and theorists who engage in the justification of political authority, but also rulers and ruled themselves. Any adequate study of legitimacy will be conscious of this dual construction of reality and combine the different aspects in a logical manner. It will also link universally justifiable norms to concrete manifestations in specific historical situations.

> To conclude, more realism in the study of legitimacy means – somewhat counter-intuitively – to overcome the empirical focus on beliefs, attitudes and compliant behaviour. It means to understand political legitimacy as a dynamic concept referring to a normatively structured societal practice of legitimation, the analysis of which requires the systematic combination of the perspectives of political theory, sociology and the history of ideas. (Gaus, 2011: 17–18)

Notes

1 'A populace's belief in legitimacy is not based on an absolute normative standard, but pluralistically on heterogeneous worlds of meaning [*Sinnwelte*] and relationally by comparison with historical or contemporary social realities' (Nohlen, 1998: 352). Easton's definition of legitimacy also belongs to this tradition (1965: 278).

2 The relativization of types of regime is also evident in Weber's remark on how the 'supreme chief' of an organization acquires their position: either through appropriation, an election or being designated as a successor (Weber, 1978: 220).

3 Luhmann understands legitimation as 'the *general willingness to accept substantially still undetermined decisions within certain limits of tolerance*' (Luhmann, 1989: 28; italics in original; translation from Gaus, 2011: 3). While Luhmann thus rejects a normative definition, Habermas conceives of legitimacy in explicitly normative terms: 'Legitimacy means that there are good arguments for a political order's claim to be recognized as right and just; a legitimate order deserves recognition. *Legitimacy means a political order's worthiness to be recognized*' (Habermas, 1976: 178; italics in original; cited in Gaus, 2011: 3).

4 'Against those who equate legitimacy with stability or efficiency, I argue that legitimacy should not be confused with the effects it produces on a system of power through the enhanced obedience of its subordinates'

(Beetham, 2013: 38).

5 Translation adapted from Scharpf (2009).

6 Beetham (2013: 37) distinguishes two central dimensions or axes of legitimacy: the justificatory principles and the conventions of consent embodied in different rules or systems of power. He thereby incorporates the normative variant into empirical research. Habermas (1973) also combines the two main strands.

7 Given this narrowness of focus in the discipline, it might be more accurate to speak of *political* legitimacy and *political* legitimation. However, this more precise way of speaking is not adopted in the literature, and so that is the convention I follow in this chapter, in the knowledge that the adjectives are tacitly implied.

8 Dahl (1989) and Lijphart (1984) go so far as to regard responsiveness as the core of democracy. On problems with this position, see Lauth (2013).

9 He regards the cases of the ECJ and ECB as more problematic, since their power is relatively unconstrained by treaties.

10 Scharpf (2004: 6) is sceptical of the possibility of democratic orders at a level beyond the nation-state: 'the condition of a real and robust collective identity [is] the Achilles' heel of attempts to apply input-based legitimation arguments to governance structures "beyond the nation-state".'

11 Examples include the World Values Survey and similar regional survey instruments.

12 Carrying out empirical research on legitimation in autocracies poses certain additional problems, including difficulties in gaining access to the field and methodological issues that affect the validity of the research. There is also the possibility of distorted response behaviour or a distorted understanding of key concepts such as democracy (Welzel and Kirsch, 2017).

13 Empirical research indicates that corruption of political elites can either decrease or increase their legitimation, even in democracies, depending on the evaluative standards that prevail in public debate.

14 Some studies combine the different approaches into a complex measure. For example, Gilley (2006: 510) considers not just support and protest, but also normative concepts: 'As both Beetham (1991) and Habermas (1975) have argued, the moral justification of state power (as opposed to its legality or consent) is particularly important because that power underwrites the laws and rules that govern so much of the rest of social and economic life. It is, so to speak, the *uber*-power and without moral justification, its negative consequences are just too hard to bear. I thus believe that justification should be weighted more heavily for a fully theorized measure of legitimacy.'

15 *Totalitarian regimes* are characterized by the complete absence of political freedoms and political equality, with power concentrated in the hands of a small elite so that the vast majority of citizens are utterly powerless and have no control over how they are governed. *Authoritarian regimes*, by contrast, do afford some limited political freedoms and power to their citizens, though not to the full extent of *democracies*.

16 Attempts at such redefinitions were observable in 'real socialist' regimes such as the German Democratic Republic, and are now appearing in China (Lu and Shi, 2015).

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- legitimacy
- legitimation
- authority
- regime
- law
- political systems

http://dx.doi.org/10.4135/9781529714333.n53