

MUNI
LAW

Why should we be governed?

Social contract and the problem of state legitimacy from Hobbes until today.

What is legitimacy? Basic problems.

- <http://existentialcomics.com/comic/211>
- Normative vs. descriptive concepts.
- Why do we need legitimacy? Right to rule, justification of political power?
What happens, if the state lacks legitimacy?
- It is important to distinguish between *power* and *authority*. Only the latter is connected to legitimacy.
- Does legitimate authority imply obligations?
- Connected to other concepts (e. g. *justice*, *power*, *coercion*, but also support).

Basic problems - continuation

- Is there a difference between justifying states in general and a political legitimacy of a certain state in particular?
- Anarchist argument. How can autonomous individuals be under a general obligation to subject their will to the will of someone else? **Wolff** argues that because there cannot be such a general obligation to obey the state, states are necessarily illegitimate.
- There is a lot of disagreement and legitimacy is still a very contested concept.

Descriptive concepts

- An influential account by **Weber**: „*the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief*“.
- Does not use a normative benchmark (does not depend on a certain procedure being used to establish legitimacy or on respect to a certain substantive value).
- Sources: *tradition, charisma or legality*.
- Even under descriptive conceptions: How to determine „true“ beliefs or support, while maintaining the power/authority distinction.

Normative concepts

- Requires a benchmark for justification of authority as „legitimate“
- What is the benchmark? Is it *consent* (social contract theories), beneficial consequences (order, protection of human rights or simply development of civilization), *democratic nature* of the system *and* *democratic procedure*?

Beneficial consequences

- **Bentham**: Legitimacy depends on whether state and its laws contribute to happiness of citizens.
- **Mill** and other liberals: Protection of liberty and political participation
- Problem of „*objective values*“; do they exist? If not, does it hinder articulation of general conditions of legitimacy in substantive terms? And what about the „losers“?
- But still – support of the population is often based, at least partly, on „substantive goods“ that are delivered to the people.

Social contract

- Real or hypothetical?
- **Kant**: It is a thought experiment – connected to public reason – the criterion is, whether individuals *could have consented to it* (see the Rawlsian connotations).
- Criticism: Just a myth, a hypothetical scenario? Real states were founded by acts of violence (but Kant, above tries to refute it). Americans tend to stress the „real nature“ of their constitution.

Democratic justification

- Important innovation of the social contract theories.
- The distinction between „binders“ and „bound“ disappears.
- Still, the theories oscillate between „pure proceduralist“ and other conceptions (that also stress the „good outcomes/substantive goods“).

Legitimacy and democracy. Open vs. closed societies.

- *Responsiveness* that promotes stability as an „empirical“ advantages of democracy (democratic instrumentalism).
- In other words – finding out about the real levels diffuse and specific support can be beneficial.

Modern constitutions and legitimacy

- Modern constitutions, in a way, express their own conditions for legitimacy. Many of them are shared – consider the concept of *liberal democracy* (democracy, rule of law, fundamental rights etc.).
- The problem remains, that is almost impossible to create a generally accepted, generally applicable theory (the multitude of approaches will arguably always be there).

International community and state legitimacy

- What is the importance of recognition?
- The idea of „minimal standards that justify non-intervention (Rawls).