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Problems with the Right to Legitimacy

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Keywords	Abstract
Constitutional legitimacy Judicial review Political systems Public trust Rule of law	This article examines the critical concept of legitimacy within political systems, with a focus on constitutional legitimacy and the judicial role in upholding this principle. By integrating theoretical insights and contemporary case studies, the discussion elucidates the complex interplay between power, authority, and legitimacy. Key themes include the judiciary's function in enforcing the rule of law and ensuring government actions comply with constitutional mandates, as well as the challenges posed by political polarization, misinformation, and external pressures. The analysis underscores the importance of maintaining uniformity and predictability in judicial decisions to foster public trust and support the legitimacy of the entire political system. Modern responses to enhance transparency and public engagement are also explored to address these evolving challenges. This comprehensive study highlights the dynamic nature of legitimacy, advocating for continual adaptation of legal and constitutional frameworks to align with societal values and expectations.

1. Introduction

The concept of legitimacy, particularly within the context of constitutions, is foundational to understanding the dynamics of political systems worldwide. This article refocuses the scope of analysis on the legitimacy of constitutions across diverse political landscapes, crucial for assessing their effectiveness amid global political upheavals and constitutional crises.

Clarification of Scope: The investigation into constitutional legitimacy is particularly pertinent as nations navigate complex challenges including governance, democracy, and human rights issues. By focusing on constitutional frameworks globally, this study aims to dissect the nuanced layers of legitimacy, comparing how different legal documents adapt and respond to societal shifts and challenges (Arato, 1994; Barker, 1990). This approach enables a deeper comprehension of constitutions not only as legal frameworks but as dynamic instruments that evolve with changing societal norms.

Importance of Legitimacy: Exploring legitimacy is essential, especially in light of recent global events that have tested the resilience of political systems. Political upheavals and the push for constitutional reforms underscore the necessity of understanding legitimacy, which is central to maintaining political stability and effective governance (Almond, 1991; Ball, 1993). This exploration seeks to highlight the mechanisms that underpin political order and influence democratic processes.

Objectives: This article sets out to:



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- **Analyze the interplay between legitimacy, power, and authority** within various constitutional regimes, assessing how these elements influence the stability and functionality of political systems (Stone Sweet, 2000).
- **Examine the impact of legitimacy** on the effectiveness of political systems during significant social and political changes, drawing insights from recent shifts in global politics (Butler & Ranney, 1994).
- **Identify contributing factors to constitutional legitimacy**, including aspects like legal-rational authority, cultural acceptance, and procedural fairness, which are pivotal in sustaining or undermining political systems (Opeskin, 2016).

By focusing on these objectives, the article aims to contribute a nuanced perspective on the challenges and opportunities facing political systems in maintaining legitimacy amidst the complexities of the global political arena.

2. Theoretical Background

Understanding the constructs of power, authority, and legitimacy is crucial for dissecting their implications within political systems, especially in relation to constitutional frameworks. This section provides clear definitions and distinctions between these key concepts and introduces theoretical frameworks that are pivotal in the study of legitimacy.

Key Concepts Defined:

- **Power** is the ability of individuals or groups to influence or control the actions of others, irrespective of objections. It can manifest in various forms across different societal structures, such as political institutions, corporations, or familial relationships (Weber, 1978).
- **Authority** is a particular type of power that is recognized as legitimate by those who are governed. It implies a voluntary acceptance by the people, who consent to follow the directives of a recognized leader or institution (Weber, 1978).
- **Legitimacy** refers to the recognition and acceptance that a rule, institution, or leader has a valid right to govern. It is a subjective perception that the authority's actions are appropriate and just within a legal and moral framework (Beetham, 1991).

Theoretical Framework:

The theoretical exploration of these concepts benefits significantly from the inclusion of Max Weber's framework of authority, which classifies authority into three types: traditional, charismatic, and legal-rational. For the purpose of this article, the focus will be predominantly on **legal-rational authority**, which is grounded in established laws and procedures that are designed to be impersonal and objective. Weber's theory posits that legal-rational authority is the most conducive to fostering legitimacy in modern societies because it is rooted in a system of well-defined and universally applied laws (Weber, 1978).

Further expanding on Weber's ideas, this article integrates the normative theory of legitimacy, which argues that legitimacy arises not only from the law but also from the normative justifications that



underpin the laws themselves (Beetham, 1991). This theory helps to explain why certain laws or constitutional frameworks are accepted or resisted by the public.

Additionally, the role of **social contract theories**, as proposed by philosophers like John Locke and Jean-Jacques Rousseau, will be discussed. These theories provide a foundational understanding of the legitimacy of political and legal authority based on the hypothetical or actual agreement among the society's members to form a state (Rousseau, 1762; Locke, 1689).

The integration of these theoretical frameworks will establish a robust foundation for analyzing how legitimacy is constructed, maintained, and challenged within constitutional regimes. This analysis will help to illuminate the complex interplay between law, societal norms, and political authority, and how they converge to shape the governance structures that underpin political stability and change.

3. Power and Authority, Power-Authority-Legitimacy Relations

Understanding the dynamics of power, authority, and legitimacy within political systems requires a nuanced analysis of how these elements interact and influence governance. This section expands on the theoretical underpinnings discussed earlier and incorporates contemporary examples that highlight these concepts in practice.

Expanded Analysis:

Power and authority are foundational elements in the architecture of any political system, but their legitimacy is what transforms mere control into recognized and accepted governance. **Power** manifests in the ability to influence or enforce decisions, often seen in the capacity of state apparatuses to impose laws and policies. **Authority**, however, derives its essence from acknowledged and accepted power, based on a recognized right to govern.

Legitimacy, then, acts as a bridge between power and authority. It is not merely about the exercise of power or the presence of authority but about the justification and acceptance of that authority by the governed. According to Weber (1978), the stability of a political system hinges significantly on this legitimacy, which can be derived from tradition, charisma, or, most relevant to contemporary governance, legal-rational establishments.

Contemporary Examples:

- **Example 1: Constitutional Change in Chile**

In 2020, Chile embarked on a process to rewrite its dictatorship-era constitution. This initiative stemmed from mass protests demanding more equitable social policies and transparent governance, indicating a significant legitimacy crisis in the existing constitutional framework. The widespread support for constitutional change reflected a collective call for a transformation in how authority is constituted and exercised, aiming to enhance the legitimacy of the governance framework (Barton, 2021).

- **Example 2: Brexit and the United Kingdom**

The Brexit referendum in 2016 is another profound instance where the interplay of power, authority, and legitimacy was prominently on display. The decision to leave the EU was not just a



demonstration of power by government authorities or the sovereignty of parliament but also a complex negotiation of legitimacy. The referendum was used as a tool to legitimize such a monumental decision, highlighting how legitimacy can directly influence policy and change national trajectories (Dennison, 2016).

- **Example 3: The 2019-2020 Hong Kong Protests**

The protests in Hong Kong against proposed extradition laws showcased a critical challenge to the legitimacy of Hong Kong's governance. The massive public outcry was indicative of a perceived overreach by the authorities and a threat to the legal-rational legitimacy established by Hong Kong's Basic Law. The government's initial insistence on the law's passage without broad consensus reflected a crisis of legitimacy, which was only somewhat ameliorated by the eventual withdrawal of the bill (Khan, 2020).

These examples illustrate the complex layers at which power, authority, and legitimacy operate. They also demonstrate the potential for legitimacy to be both a stabilizing force and a point of contention within various governance frameworks. The exploration of these cases within the article will provide a richer understanding of how contemporary political systems manage the delicate balance between maintaining control and securing legitimacy.

4. Legitimacy and Constitutional Practice

The legitimacy of constitutions is a central concern in understanding the stability and efficacy of political systems. This section delves deeper into how constitutional legitimacy is conceptualized, pursued, and challenged, particularly in post-Soviet and post-communist contexts. Through detailed case studies, this analysis reveals the complex dynamics involved in constitutional reforms and the ongoing challenges to achieving and maintaining legitimacy.

Focus on Constitutional Legitimacy:

Constitutional legitimacy involves more than the mere legality of a constitution; it encompasses the broader acceptance and support of the constitution by the nation's citizens and its institutions. In post-Soviet and post-communist countries, the transitions from authoritarian regimes to democratic forms of governance have placed significant pressure on the processes of drafting and legitimizing new constitutions. These processes often reflect a broader struggle to redefine national identity, establish political authority, and ensure social stability (Elster, 1993).

Detailed Case Studies:

- **Case Study 1: The Russian Federation (1993 Constitution)** After the dissolution of the Soviet Union, Russia adopted a new constitution in 1993, following a contentious and violent constitutional crisis. The push for a new constitution emerged from the need to address the power imbalances between the president and parliament established in the Soviet era. The 1993 constitution significantly expanded presidential powers, which, while stabilizing the political system in the short term, has raised ongoing concerns about the concentration of power and its implications for democratic governance. The legitimacy of this constitution is still debated, particularly regarding how it was ratified amidst significant political turmoil and violence (Sharlet, 1994).



- **Case Study 2: Hungary (2011 Constitution)** Hungary's 2011 constitution, often referred to as the Fundamental Law, replaced the post-communist constitution of 1989. It was enacted under the governance of the Fidesz party, which held a supermajority in parliament. Critics argue that the process lacked sufficient transparency and inclusivity, raising issues about its legitimacy. The constitution's content has also been controversial, incorporating conservative values that some claim reflect partisan interests more than a broad consensus, thus challenging its acceptance across the Hungarian society (Scheppelle, 2013).
- **Case Study 3: Poland (1997 Constitution)** Poland's journey to constitutional legitimacy offers a contrast to Hungary. The 1997 constitution was the result of extensive negotiations and compromise among various political parties and societal groups, which aimed to create a foundational document that would not only serve democratic governance but also withstand the test of time. The relatively inclusive process of drafting and ratification has endowed the Polish constitution with a degree of legitimacy that has helped stabilize the political system despite recent challenges to judicial independence and democratic norms (Sadurski, 2002).

These case studies highlight the varied approaches to achieving constitutional legitimacy and the different outcomes these approaches can yield. While some countries may achieve a degree of stability through their new constitutions, the legitimacy of these documents can remain contested if the processes by which they are adopted do not engage diverse societal groups or if they fail to adequately balance power within the government.

5. Legitimacy in Judicial Practice

The judiciary plays a crucial role in maintaining the constitutional legitimacy by ensuring that the rule of law is upheld, and that governmental actions remain within the bounds set by the constitution. This section explores the multi-faceted role of the judiciary in this context and its impact on public trust and the consistency of judicial decisions.

Role of Judiciary:

The judiciary acts as a guardian of constitutional legitimacy by interpreting and applying the law in ways that are meant to be unbiased and faithful to the constitutional text. Through judicial review, courts have the power to invalidate laws and government actions that contravene constitutional provisions, thereby enforcing limits on government authority and protecting citizens' rights. This crucial function supports the legal rational authority that underpins constitutional legitimacy (Opeskin, 2016).

Impact on Public Trust:

Public trust in the judicial system is essential for the legitimacy of not only the judiciary itself but also the broader political system. Judicial decisions that are perceived as fair, just, and impartial tend to enhance public trust, while perceptions of bias or injustice can severely undermine it. This trust is influenced by various factors, including the transparency of the judicial process, the accessibility of judicial remedies, and the extent to which judicial decisions align with public moral and ethical standards (Gibson, Caldeira, & Spence, 2003).

Uniformity and Predictability:



Consistency in judicial decisions is critical to the rule of law, as it provides the public and legal practitioners with clear expectations regarding the application of laws. Uniformity and predictability in rulings reinforce the legitimacy of the judiciary by demonstrating that legal principles, rather than individual whims, guide judicial decisions. Inconsistencies, on the other hand, can lead to perceptions of arbitrariness, which may erode public confidence in the legal system and, by extension, its legitimacy (Stone Sweet, 2000).

6. Challenges to Legitimacy

In contemporary times, the legitimacy of political and judicial systems faces numerous challenges that can undermine their stability and effectiveness.

Modern Challenges:

- **Political Polarization:** Increased political polarization can lead to a divided society where differing factions possess radically different views on the legitimacy of judicial and political institutions, often resulting in gridlock and ineffective governance.
- **Misinformation:** The rise of digital media has facilitated the spread of misinformation, which can distort public perception of the legitimacy of judicial decisions and the fairness of constitutional processes.
- **External Influences:** Globalization and external political pressures can impact domestic constitutional processes, posing challenges to maintaining sovereign constitutional legitimacy in the face of international influences.

Responses to Challenges:

Different countries have adopted various strategies to address these challenges to legitimacy. For example, some nations have increased public engagement and education efforts to combat misinformation and enhance the transparency of judicial and political processes. Others have implemented reforms to make judicial processes more accessible and understandable to the general public, thereby boosting transparency and trust. The effectiveness of these responses varies widely, often depending on the specific political, social, and cultural context of each country (Haldemann, 2021).

Conclusion

This article has explored the complex and multifaceted nature of legitimacy in political systems, focusing particularly on constitutional legitimacy and the role of the judiciary in upholding this principle. Through a detailed examination of theoretical frameworks, the intricate relationship between power, authority, and legitimacy has been delineated, providing a deeper understanding of how these dynamics interact within various political contexts. The analysis of contemporary case studies has further illustrated the practical applications and challenges inherent in maintaining constitutional legitimacy.

The role of the judiciary, as explored in this discussion, is critical in enforcing the rule of law and ensuring that government actions remain aligned with constitutional principles. The judiciary's ability to maintain uniformity and predictability in its decisions is paramount in fostering public trust and strengthening the legitimacy of the entire political system. However, as modern challenges such as political polarization, misinformation, and external influences continue to evolve, the judiciary and governing bodies face increasing pressure to adapt and respond effectively.



These challenges highlight the ongoing need for robust legal and constitutional frameworks that are capable of withstanding the pressures of contemporary political and social developments. Responses to these challenges, including enhancing transparency, engaging the public, and fostering a deeper understanding of judicial and constitutional processes, are crucial in maintaining the stability and legitimacy of political systems.

In conclusion, the pursuit of legitimacy within constitutional and judicial practices is a dynamic and ongoing process, requiring constant vigilance and adaptation. As this article has shown, the legitimacy of political systems is not just about legal frameworks but also about the continuous effort to align these systems with the evolving values and expectations of the society they serve. For future research, it would be beneficial to continue exploring the impacts of technological advancements and global interconnectedness on constitutional legitimacy, potentially offering new insights into how legitimacy can be maintained in an increasingly complex global landscape.

This exploration of legitimacy has not only reinforced the importance of legal-rational authority in modern governance but has also highlighted the intricate balance required to navigate the challenges of contemporary political life. The lessons drawn from various constitutional frameworks underscore the universal quest for governance that is not only effective but also just and accepted by those it aims to govern.

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