

Legitimacy

Handbook on Theories of Governance

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16. Legitimacy

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INTRODUCTION

Legitimacy is a key concept of any effort to theorize how governance works, contributing both to the effectiveness and to the normative evaluation of the ‘interactive processes through which society and the economy are steered towards collectively negotiated objectives’ (Introduction in this Handbook). However, the concept of legitimacy has, as do most central concepts in the social sciences, numerous connotations, definitions and (sub)categorizations.

The starting point for this brief summary of how legitimacy can be theorized and understood in diverse contexts of governance is the understanding of legitimacy as being about justification of authority (Bodansky 1999). Traditionally, the concern about legitimacy has been centred on how the delegation of authority and power from citizens to (national) governments can be justified. Depending on the political system, some key principles of justification have evolved related to the nature of the political regime (democracy, monarchy, theocracy, etc.) (Chapter 15 in this Handbook). There is also a body of literature on organizational legitimacy that approaches the concept either from the perspective of organizations’ (across the private and public spectrum) strategic efforts to gain societal approval or from a broader sector-wide institutional perspective where legitimacy is not seen as an operational resource (Suchman 1995).

The emerging literature on legitimacy in contexts of governance draws on both these strands of literature. Its diversity, however, is considerable. It is diverse in the types of governance it addresses: from the legitimacy of ‘traditional’ governance beyond the nation-state through intergovernmental organizations and norms at regional or global level (Bodansky 1999; Scharpf 2000; Coicaud 2001; Howse and Nicolaidis 2003; Moravcsik 2004; Zürn 2004; Buchanan and Keohane 2006; Wolfrum and Röben 2008; Elliott 2012; Karlsson-Vinkhuyzen and McGee 2013), to transnational forms of governance through non-state, public–private or multi-stakeholder (regulatory) initiatives (Bäckstrand 2006; Bernstein and Cashore 2007; Black 2008; Mueller et al. 2009; Cutler 2010; Quack 2010; Schepers 2010; Mele and Schepers 2013; Widerberg and Pattberg 2015) and various governance arrangements and contexts in domestic settings (Dryzek 2001; Sørensen and Torfing 2005; van Oosterhout 2007; Klijn and Edelenbos 2012). The empirical fields of governance analysed in this literature include energy, environment, security, trade, economics and finance. The literature is also quite diverse in the approaches it utilizes to conceptualize and assess legitimacy and in the depth of analysis of this concept.

MULTIPLE NOTIONS AND SOURCES OF LEGITIMACY

The most fundamental distinction in analysing legitimacy in relation to political orders is between its normative and sociological connotations (Bodansky 1999; Black 2008). While the former refers to a fundamental normative validity of justifying the exercise of authority, the latter concerns the societal acceptance of expressions of authority (Zürn 2004). When processes of governance enter the scene and aspire to gain authority, the ability to outline normative arguments that provide a coherent justification for that authority is fundamental for a society that wants to be reflective of its value foundations. The societal acceptance of the authority of governance can be seen as a normative requirement linked to theories of democracy, but it is also important for the more widespread cooperation by citizens to achieve its objective/s.

There are multiple categorizations of sources of legitimacy in the literature, including Scharpf's (1999) distinction between input and output legitimacy as one of the more well-known ones.¹ Input legitimacy in his connotation is about legitimacy gained from the process of government, government *by* the people, while output legitimacy is gained from the result, government *for* the people (Scharpf 1999). Scholars have also identified more fine-grained categorizations that build on this basic distinction and include a number of subcomponents of legitimacy (see for example Bodansky 1999 and Karlsson-Vinkhuyzen and Vihma 2009 for a discussion of normative legitimacy). It is particularly valuable to consider some of these subcomponents of legitimacy in governance contexts, as discussed below.

LEGITIMACY FOR WHOM? THE IMPLICATIONS OF BLURRY BOUNDARIES

There is one issue with regard to governance and legitimacy that has implications across several components of both input and output legitimacy, and this concerns who is the subject in this equation. Legitimacy for whom? Governance often blurs boundaries with regard to who exercises authority over whom. Even if governance is defined as being an activity with public purpose, the question still arises: which public or which portion of which public is being addressed? This becomes particularly relevant when a number of non-public actors become involved in governance, some of whom may largely have non-public purposes. For reflections on normative legitimacy this can be phrased as identifying the appropriate moral community (local, national, global, the powerful, the vulnerable, etc.). For example, in global governance, principles of legitimacy have mostly presumed that states are the formal members of the international community (Clark 2005). An alternative cosmopolitan perspective considers global justice among both people and states as a fundamental objective of governance, thereby disclaiming states as the only entities with a right to rule or as subjects to that rule (Elliott 2012). The limitation of a uniquely state-centred perspective is also raised by Cutler (2010) in her analysis of the transnational private governance of security firms.

The number of public–private or non-state regulatory regimes in the field of social and environmental issues has provided the academic community with ample opportunity to examine whose legitimacy claims count or should count (Elliott 2012; Mele and Schepers 2013; Haack et al. 2014). Elliott (2012: 375) suggests that those who should count for a rule system to be legitimate are ‘those who are most *directly* affected by those rules because they are required to implement them or conform to them’ and ‘those who are most affected by the *impact* of rules and rule systems’. In any context of governance, but particularly in contexts of multilevel, transnational and global governance, the cultural, socio-economic and political diversity of relevant individuals and groups, as well as their large numbers, presents a very basic challenge to sociological legitimacy. But also for normative legitimacy the possibility to transfer justificatory motivations from one context of authority to another is widely debated, such as between national political authority and international law (Scharpf 2001; Howse and Nicolaidis 2003; Clark 2005).

INPUT LEGITIMACY

Where governance is emerging as a new source of authority – either where governments have earlier taken charge or where no authority has been exercised previously – questions can and will be raised about who is or should be part of those claiming authority, that is, having a seat at the decision-making table. Such claims may be particularly contested where there is limited tradition to build on, and rules for who is in or out have to be negotiated. From a normative perspective, inclusiveness of participation is often considered a key source of input legitimacy. This can refer to adequate representation of those who are ‘governed’, making sure not only the powerful but also the vulnerable are included, as Eckersley (2012) discusses for global climate governance. Inclusive participation in global governance has come to refer both to universal governmental participation – for example, contrasting the low legitimacy score for minilateral governance forums such as the G8 and G20 with the universal multilateralism of the United Nations (Karlsson-Vinkhuyzen and McGee 2013) – and to participation of non-state actors, particularly from civil society (Reinicke and Witte 2000; Scholte 2002). The participation of non-state actors is typically expressed as a response to the democratic deficit of global governance (Elliott 2012) or as a means of governing ‘with the people’ (Mügge 2011). It is the voice of those who are expected to follow the rules and are influenced by them that is desired in such participation, although it may bring a risk to only consider ‘stakeholders’ rather than ‘right holders’ in the context of relations of unequal power (Elliott 2012). However, the practical inclusion of many actors at the table poses grave challenges, including information asymmetries and power struggles, which may put effective governance at peril (Mele and Schepers 2013).

A number of issues are also raised for what some refer to as throughput legitimacy, or the quality of decision-making processes, including transparency and the quality of deliberation (Cutler 2010). Lack of transparency is an often raised critique of governance arrangements in minilateral global governance arenas (Hajnal 2007; Karlsson-Vinkhuyzen and McGee 2013) and in non-state regulatory regimes (Black

2008). Detached from formal government contexts, such governance arrangements have to negotiate principles for transparency both internally and externally. On a more systemic level the mechanisms of, for example, transnational governance are mostly discussed in expert circles and may seem impervious to the general public (Haack et al. 2014). The quality of deliberation is linked in these cases to the existence of 'genuine deliberation and argumentation processes' that are created by 'clear and fair process arrangements between actors where they share knowledge and explore possible solutions and exchange value judgements' (Klijn and Edelenbos 2012: 634, 635) as depicted in theories of deliberative democracy (Dryzek 2006). If governance provides greater actor diversity there is considerable potential for richer and more diverse inputs and expertise, but there is also a considerable risk of power differences and conflicts.

The concept of accountability (also discussed in chapter 17) creates considerable challenges for a governance context where boundaries are blurry owing to its highly relational character. Mashaw's (2007) structured overview of the grammar of accountability encompasses the questions of who is accountable, to whom, according to which standards, about what, how and with what type of sanctions and rewards as effects. He provides separate accounts for the public sphere (governments and public officials), the market and the social sphere. He only highlights the challenge of considering accountability when these spheres are mixed, as they were in a pre-modern context. Another typology of accountability is that of Koppell (2005), who identifies five dimensions of the concept – transparency, liability, controllability, responsibility and responsiveness – and highlights the challenges of organizations that, in contexts of governance, fail to handle conflicting accountability demands. A common critique of (transnational) non-state regulatory regimes is that they evade domestic or international law and that those affected by their decisions have no possibility of calling them to account politically or legally. The constitutional mechanisms of accountability that have become part of liberal democratic systems are not available (Black 2008). This is likely to be a generic issue in many governance contexts, as are the challenges for accountability stemming from the multitude of diverse actors involved in governance and its often polycentric nature. Who can then be held to account for what and for whom? The ambiguity in identifying the relevant constituency in private transnational governance is well illustrated by Cutler's (2010) case of private security firms operating at the request of states: who is the relevant public in this case and to whom should they be accountable – local residents, corporate employees, shareholders or the local government? Other central aspects of accountability that bear particularly on governance are its dialectical nature – the accountee and accountant are mutually dependent on each other – and its communicative character: participants in the accountability relationship use it to 'make sense of their own and each other's role' (Black 2008: 16).

Another potential source for (claiming) legitimacy of governance arrangements is expert knowledge. One example of an empirical context where this has been central to the legitimization argument is in the field of privatization of security operations where states have outsourced their operations (Cutler 2010). While these private actors may claim to have particular scientific expertise and local knowledge, they are simply assumed to act in the public interest, while in fact it is very unclear whose interests these actors represent and who they are accountable to (Cutler 2010). This may be a very specific example, but Cutler (2010) sees this 'authorizing role of experts' as

symptomatic of how governance navigates in a contemporary transnational risk society enabled by neoliberal forms of regulation and governance, which raises important issues around political legitimacy. Mügge (2011: 57) sees the same trend of governance relying increasingly on experts employed by non-majoritarian institutions but argues that because it is impossible to objectively define 'whose knowledge and opinions should count' it 'makes expertise ineligible as a criterion for legitimacy'.

OUTPUT LEGITIMACY

The output legitimacy of governance depends on its capacity to provide (public) benefits and potentially also to do so comparatively better or more efficiently than other actors (Mügge 2011). Another common element of the 'quality' of output is equity, which has been particularly featured in academic and other discussions about legitimacy where grave inequity prevails. Governance that perpetuates or worsens inequality, for example in global governance, is considered to possess low legitimacy (Hirsch 2004). What is seen as desirable (public) benefits is linked to ideology and belief. For example, the legitimacy of global trade governance through the World Trade Organization depends on people's assumptions about the benefits of trade (Mügge 2011). The large number of potential perspectives on the legitimacy of governance can thus raise a number of difficulties for identifying outputs deemed desirable. Referring to her study of roundtables in global value chains, Schouten (2013) argues that, because these governance arrangements are voluntary, those who join them need to have their own private interest to join. At the same time the regulatory measures these roundtables develop are claimed to have a primarily public purpose. This potential dissonance will make evaluations of output legitimacy challenging, as contribution to some kinds of public goods can be seen as a condition for such legitimacy. The importance for sociological legitimacy that governance does contribute to a desired objective is apparent in the field of global environmental governance, where the inadequacy of governance systems created to address the challenges raises serious concerns about their legitimacy (Elliott 2012).

One distinguishing feature of many governance contexts is the high reliance on legitimacy as a source of influence on for example behaviour since it cannot resort to legal sanctioning systems (Black 2008). Indeed, for some actors a particular governance arrangement may be seen as legitimate on the condition that it lacks enforcement mechanisms, such as in the case of corporations in the UN Global Compact (Mele and Schepers 2013). While this reliance on voluntary regulation with its reliance on only soft means of coercion (such as deliberation, learning and persuasion often linked to legitimacy claims) has produced critical comments about the potential for influence and output legitimacy it has also led governance actors to become highly engaged in processes of legitimization. One implication of the network character of governance is that the legitimacy of a particular governance arrangement is highly dependent on the performance (compliance) of its affiliates (Haack et al. 2014). Factors that have been identified as sources for sociological legitimacy then become important as varied as these can be. For example, Suchman (1995) identifies three types of sociological legitimacy linked to three primary sources for viewing an organization and its activities

as legitimate: *pragmatic legitimacy* linked to self-interest based evaluations of an organization by groups it influences; *moral legitimacy* linked to normative (not self-interested) evaluations of an organization and its activities; and *cognitive legitimacy* linked to an organization being seen as inevitable and taken for granted. Another example is legitimacy in the eyes of states. This is argued to be a primary force for their compliance with international rules (legal and non-legal), and states find even stronger reasons to comply with rules that are also seen to be just (Franck 1990).

LOOKING FORWARD

The literature on legitimacy in contexts of governance is rich and growing. It is possible to identify some directions for future and further efforts that would be valuable for its advancement. One direction is a deeper consideration of those particular challenges that come with legitimacy in relation to governance. For example, what factors are essential to consider in justifying authority normatively and sociologically across various socio-political and cultural contexts? How, in particular, is it possible to analytically handle the blurry boundaries of such authority? The diversity in the sources of legitimacy in different societies is linked to shared norms and understanding of history (Bernstein and Cashore 2007).

Another direction that is now relatively invisible in the literature is to address the dynamic nature of legitimacy. On the one hand, how do normative and sociological notions of legitimacy change over time? How do these notions change and what drives such changes? On the other hand, and relatedly, what is the relationship between normative and sociological legitimacy theoretically and empirically? Legitimacy is ‘not fixed or given’ but rather ‘a product of shifting norms about who should do what and how’, and such an understanding merges normative and subjective approaches to the concept (Elliott 2012: 368). The factors identified as sources for normative legitimacy are linked to shifting standards of legitimacy among individuals and groups as well as to shifting discourses and theoretical and normative paradigms in the academic and political realms. Conversely, dominating normative theories of legitimacy could have influence on what components are considered relevant for subjective legitimacy in societies (Karlsson-Vinkhuyzen and Vihma 2009). Another point of inquiry around legitimacy dynamics is the relationship between input and output legitimacy. Can output legitimacy trump input legitimacy and on what conditions? Are the trade-offs different in contexts of governance rather than governments exerting authority?

Finally it would be valuable to more systematically explore and address the methodological challenges with analysing the legitimacy of governance, because there is a lack of ‘instruments to subject governance institutions to a comprehensive and empirically founded “legitimacy audit”’ (Mügge 2011: 53). For normative legitimacy, an analytical framework that identifies its central components has been developed (Karlsson-Vinkhuyzen and Vihma 2009; Mügge 2011). But how universal can such frameworks be across socio-political, administrative and cultural diversity? Furthermore, Mügge (2011) concludes that at least with respect to output legitimacy it is impossible to objectively assess this, because it is ‘not a property of real-world institutions, but a function of observers’ preferences and normative convictions’. Then

if legitimacy is rather looked at as being ‘possessed objectively, yet created subjectively’ (Suchman 1995: 574) there is a need to solicit the views of those observers, through surveys, interviews and so on (see for example Klijn and Edelenbos 2012). However, the question of whose views to consider again comes to the fore. The complexity of governance makes legitimacy ‘audits’, whether normative or sociological, a challenging task.

NOTE

1. There is considerable variation in concepts used. For example, output legitimacy has also been referred to as substantive legitimacy and sociological legitimacy as empirical legitimacy, among other terms.

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