

Introduction to Law and Legitimacy

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1. Introduction

If you look up the words ‘legitimate’ and ‘legitimacy’ in The Danish Dictionary of Meanings,¹ they are explained by phrases stating that what has to be legitimate or have legitimacy must be in accordance with current legislation or current norms and morals so that it is justified or acceptable. Thus, the law has legitimacy when it is legal, lawful, fair or morally sound, i.e. when it is in accordance with current norms in a given society. Thereby, it is supported by society. According to The Great Danish Encyclopaedia, the concept of ‘legitimacy’ relates exactly to the lawfulness of a political government, a governance or a legislation, and the legitimacy is considered to be subject to the condition that the governed population recognizes the ruler and the exercise of authority as something that should be respected. The legitimacy of a government is thus measured by the acceptance of its subjects rather than the State’s threat of coercion. According to this definition a State based on force and violence is not legitimate just like a legislation which by the threat of violence and coercion has been forced upon the citizens of a society is not legitimate: In order to talk about legitimacy, a government’s decisions and interpretation of the law must command a certain degree of accept and the obedience of the citizens.

1. See <http://www.ordbogen.com/>.

In many ways the crucial point about law is the question of whether the law is legitimate as this ensures that the citizens of a society (voluntarily) obey the law. The question of legitimacy is, in other words, the fundamental focal point in the relationship between law and politics.

If we dissect the relationship between law and politics, we can basically interpret it in three ways: *First of all* one might think that law is superior to politics so that a pursued policy must be legally acceptable to be legitimate, i.e. that legal values and principles play a decisive role as a basis of legitimation for political decisions. *Secondly*, one might think that politics is superior to law so that law is interpreted as an instrument of political decisions or power structures as the political decision-makers act as (presumably legitimate) legislators. And *thirdly*, law and politics can be perceived as two independent, equal and separate spheres which should be understood and justified in their own terms.

The focal point of this introduction is the relationship between law and politics and how one thing can legitimise the other, i.e. how law, on the one hand, helps legitimising a certain system of government, and, on the other, how a certain system of government helps legitimising law. However, a very large part of the 20th century's legal thinking has been characterised by the third perception of the relationship between law and politics, namely that the two phenomena should be regarded as two independent, equal and separate spheres which should be understood and justified in their own terms. Therefore, this perception of the relationship – or more precisely lack of relationship – also deserves to be mentioned.

The first section thus concerns the question of whether there is a legitimacy derived from a natural law, i.e. when the law's legitimacy can be based on conditions external to human conventions. One of the historically most widespread and influential ways of legitimising law can be encompassed under the umbrella term 'natural law' which refers to the fact that legitimation of what is law is independent of the human being's individual actions and decisions. According to these theories, the innermost core of the law is based on something unchangeable, for example God's will, or the fact that man as the only living mammal is controlled by rationality, such as Thomas Hobbes and John Locke claim.

The second section deals with political legitimacy, i.e. when the law's legitimacy is based on human decisions. Contrary to the theories relating to natural law, a number of theories encompassed under the umbrella term 'political legitimacy' claim that the law derives its legitimacy from the deliberate decisions of humans. This also means that it is possible to change the law if those who have a legitimate right to do so want it. These theories thereby fo-