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0521782619 - Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility

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## Introduction

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What is political legitimacy? Under what conditions can one speak of a politically legitimate situation? Though simple in their formulation, these questions are nevertheless complicated. Providing satisfactory responses to them presupposes that one is able to surmount a certain number of problems, one of the foremost being the notion of political judgement.

Facing up to such a notion boils down, in effect, to appealing to a 'faculty of judgement' in the political domain. That faculty consists in evaluating the decisions and actions of rulers and institutions who are charged with ensuring that society runs well. It presupposes that the question of the criteria for political judgement has been elucidated – that is to say, that the conditions for the validity of those elements that allow for an evaluation of the just character of political relations have been established. Now, in what, precisely, do those conditions consist? Where are they to be found? How is one to assure oneself of their reliability?

Because of its complexity, the theme of legitimacy occupies a paradoxical position in contemporary political thought. On the one hand, it is granted that legitimacy is essential to the operation of political life. Legitimacy is therefore taken into account in analyses whose objective is to describe and to explain its mechanisms. And if one were to rank the terms to which political observers have recourse in their work, the word *legitimacy* would arrive in the top grouping. Only rarely do writings on this topic and observers of the political scene ignore this notion.

On the other hand, the treatment of the concept of legitimacy often brings out a certain reticence. Although legitimacy is indissociable from the faculty of judgement, most works and reflections that make use of it are loath to take into account the dimension of judgement it implies. They refuse to conduct research into the conditions for the right to govern by inquiring about the criteria used to evaluate political life. Max Weber's analyses of legitimacy, as we shall see, have a great deal to do with this phenomenon.

The situation surrounding this question is therefore quite troubling. The importance of the notion of legitimacy is recognised, as is attested

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to by the fact that the observers of political life cannot prevent themselves from referring to it. But this recognition goes hand in hand with a reluctance to broach the question of political judgement.

Thus, to the question ‘What is political legitimacy?’ is quickly added another one: How is one to explain the fact that, in contemporary political thought, the study of the idea of legitimacy does not seem to integrate any reflection upon the faculty of judgement in politics? This ‘oversight’, or ‘denial’, compels us to try to understand the signification of the notion of legitimacy from a relatively general point of view and to explain its paradoxical status in the field of contemporary political studies.

We shall begin by analysing a certain number of key themes regarding legitimacy. The examination of the question of legitimacy and of the faculty of judgement will then lead us into the heart of a history of ideas – but also a history of modern societies. On that basis, it will become possible to formulate some hypotheses, ones likely to allow us to surmount the aporias characteristic of the conventional approach to the topic of legitimacy.

Thus, in the first chapter we provide a definition of legitimacy and try to sort out its meaning on the political level. The idea of legitimacy is first of all defined in connection with the notions of consent, a network of norms – around which is made the pact [*accord*] among individuals in society – and law, which is conceived as a factor in the protection and promulgation of agreement [*accord*] about legitimacy. In the effort to understand the political from the angle of legitimacy, we seek from this perspective to set out the relationships of command and obedience in terms of right [*droit*] and to bring into play a dynamic of responsibility on the part of the governors and the governed – a dynamic that itself requires an idea of political judgement. This orientation, which places the accent on the search for the conditions political relationships are to fulfil in order to be seen to assume a right and just character, therefore breaks away from Marxist and positivist conceptions of political analysis.

The second chapter offers an account of the objections that have been formulated against analysing politics in terms of legitimacy, and shows their limitations. These objections lie at the heart of the paradoxical situation this notion finds itself in within contemporary political thought and can be entered under the following two headings: the theoretical and the methodological. A complementary relationship obviously exists between these two levels.

The theoretical objections consist essentially in rejecting the possibility of studying politics in terms of the right to govern. These objections are lodged either because the idea that legal action has any privileged

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connection with the theme of justice is contested or because the consent of individuals is thought not to play any role therein, or because the problematic of legitimacy is likened to a moral perception of the political, whereas the latter is said to have strictly nothing to do with ethical principles.

The objections of a methodological order lie primarily in a challenge to the validity of approaching political reality from the standpoint of values. They are based on a sort of empiricism that is defined above all by a separation of facts and values. Such a separation rules out the possibility of implementing the faculty of judgement and of taking practical reason into account in any way.

Such criticisms, which basically stem from Marxist and positivist currents of thought, take us back to such classical authors as Machiavelli, Marx, and Weber as well as to some contemporary authors, in particular Pierre Bourdieu and Theda Skocpol. Criticisms of this sort have some serious drawbacks and contain some grave contradictions: while the field of law is not the paradise of fairness some people depict it as, it is not to be reduced for all that to a more or less disguised use of violence. It is appropriate to give things their due and to examine in what way the field of law does indeed authoritatively express, for those living in society, the idea of social and political justice and contributes towards its realisation. Moreover, the role played by individual consent cannot systematically be denied. It is one of the essential factors in political relationships. And furthermore, morality is not alien to politics. Without our being able to identify it strictly with ethical principles and actions, politics could not disregard morality completely without the risk of seeing relationships among the members of one and the same community turning into open warfare. Finally, as much on the theoretical as on the methodological level, the separation of facts from values seems neither possible nor desirable. The analysis of legitimacy must therefore be distinguished from a narrow empiricism or positivism.

Chapter 3 shows that these theoretical and methodological objections, which take up a considerable, though often diffuse, space in contemporary political thought, are set within a history of social theories and of modern societies. They are in line with the scientistic conception of how to analyse social and political reality, as that conception was developed beginning in the seventeenth century under the influence of natural scientific study. Here, the reflections of Thomas Hobbes and Montesquieu serve as a point of departure. After the Age of Enlightenment, during which there was a convergence between theoretical reason and practical reason, a divorce ensued. Max Weber's reflections on the separation of facts and values is illustrative of this situation. But this division

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between theoretical reason and practical reason would not have been possible unless societies themselves had gone through a crisis as to the groundedness of their own values and, by way of extension, of values in general. Now, while this crisis is in part the product of that characteristic movement by which the world we know breaks with the premodern one, it is also the result of the developmental process of the ideals of modernity. In developing and in seeking to fulfil their ambition of universality, these ideals are turned against themselves and come to pose the question of legitimacy as one of the central stakes in both political reflection and political practice: they constitute legitimacy at once as a point of origin and as a line on the horizon. In their reality, our societies cannot fully align themselves upon them both. Legitimacy becomes therefore a key problem of modern political life.

How is it possible to surmount the aporias to which modernity is condemned as regards legitimacy? The last three chapters of the book attempt to answer that question. They offer three complementary paths of reflection, which deal with the relations between the idea of legitimacy, on the one hand, and the experience of history and of the community, on the other. By combining them, we can rehabilitate the roles of practical reasoning and the faculty of judgement in the analysis of social and political phenomena.

In Chapter 4, we establish that an authentic reflection upon practical truths has to break away from a scientific interpretation of history. From this point of view, the Marxist and Weberian conceptions of history are equally unreliable. Each one in its own way presents the risk of pegging the idea of legitimacy on that of legality. As for Carl Schmitt's theories, which are analysed as a prolongation of the path laid out by Max Weber, they offer a good illustration of the dangers to which one is exposed when one subjects law to the imperatives of politics. In any case, we shall see that the scientific, Marxist, and Weberian orientations all share a nostalgia for the absolute. That nostalgia forbids them to pose the question of truth within history in a way that would allow them to think legitimacy in satisfactory terms.

In opposition to these theories, it is emphasised in Chapter 5 that the exercise of the faculty of judgement in modernity – wherein the plural and shifting character of human reality and of the referential systems used to evaluate this reality occupy a place of key importance – necessitates a revision of our conception of history and of history's relations with social and political theory. This is indicated by two points of view, which are complementary. In the first place, while it is useful to take empirical data into account when reflecting upon legitimacy, it can be so only when such a practice is articulated in tandem with what are called *values*.

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That is what bids us to remain attentive to the impact of values on the constitution of human phenomena and not to describe the axiological domain as irrational, the consequence of which would be to prevent us from being able to establish a hierarchy among its component parts. But it also implies the implementation of a neutral and objective point of view that integrates an engaged approach to human reality. In the second place, in order to deploy one's faculty of judgement, one has to shed light on the kind of relation that exists between the analysis of social and political phenomena and history. To render the criteria for judgement explicit, one must determine the domain within which the faculty of judgement is applicable. Here, in fact, it is a matter of being careful that the analysis of social and political phenomena and the evaluations of the right to govern that may result therefrom will not be established in terms of criteria that are alien to the situations under examination.

The sixth and final chapter shows that, in working out a theory of political deliberation, it is important to do so in connection with the meaning of the possible and of the necessary. This is a meaning with which individuals identify, and it is starting from this meaning that they evaluate their situation, asking whether or not it corresponds to their criteria for what is just and unjust. It is from this standpoint that the aforementioned reflections on history take on their full strength. Indeed, it is in questioning oneself about the way in which individuals recognise themselves in the values that define the identity of the society in which they live – indeed, it is in examining whether they consider the place reserved for them acceptable or unacceptable – that it is possible to go further in one's reflections on legitimacy. In other words, it is a matter of seeing how individuals position themselves within the community to which they belong. From this point of view, it is possible to explicate the legitimate or illegitimate character of a political situation by taking into account both the idea of right promoted by the identity of a given society and the attitudes of adherence or rejection individuals exhibit as regards this idea of right. The ruled may reject the way in which they are governed, and this opens up forms of contestation and, in some cases, more or less strategic forms of political change. Whether or not they do so depends upon the configuration of the relations of forces, and notably upon the chances opponents have to succeed in their efforts at contestation, as well as upon the (material and symbolic) cost such an undertaking represents. In any case, without necessarily witnessing radical upheavals, it is possible to spot indications of political legitimacy or illegitimacy through the ways in which, and the degrees to which, individuals invest themselves in the life of their society. This aspect of the question of legitimacy can be examined by analysing the process by which one passes

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from demands that are discredited, even criminalised, by the existing authorities, to points of view that begin to be listened to and are ultimately legalised.

Of course, one has to assume some methodological and intellectual positions when following this line of research. In the first place, although the present work belongs to the field of political science, it does not limit itself thereto, and it also calls upon the disciplines of philosophy, sociology, and law. Indeed, by virtue of its configuration and its position, at the place where the social bond is brought together, the question of legitimacy has to be grasped from the outset in a pluridisciplinary perspective. Let us add that to a great extent the present book calls upon the history of social and political ideas. And yet, it is not for all that a matter of offering an exhaustive account here of these intellectual and historical phenomena for their own sake. Such phenomena are treated, rather, as revelatory indices of the movement that is constitutive of the problematic of legitimacy. In the end, it is also a matter, when studying the question of legitimacy, of taking seriously the normative dimension of human reality and of examining how one might rehabilitate that dimension.

These methodological and intellectual positions go to explain the dual nature of the present work. On the one hand, our investigation takes the form of a historical reconstitution or reconstruction. On the other, this reconstitution is placed in the service of an analysis of the conditions of possibility for a reflection upon practical truths. It is obviously not a question of proposing solutions and answers *in abstracto*. The objective, on the contrary, is to show that, far from forbidding one to question the faculty of judgement in politics or from rendering that questioning superfluous, historical rootedness urgently requires such questioning. To put it briefly: it is a matter of implementing a normative approach to the question of legitimacy, while endeavouring to set things in historical perspective.

From this point of view, the analysis proposed here offers an alternative to political reflection as it has been developed in a certain number of conventional ways.

- First of all, it distinguishes itself from a positivist approach to political reality. Without denying, obviously, the usefulness of the latter approach, it contests that approach's pretensions to hegemony, which are the combined product of the ambient scientism, force of habit, and a certain intellectual laziness. These three factors have led researchers to turn away from basic questions,

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whose complexity and nature entail provisional, ever-revisable answers and which, in another connection, go against received ideas within the French scientific community;

- Secondly, history is used here, but it is not studied for its own sake. Without contesting the role historical works play in reappropriating the past and in constituting our memory, it is just too easy a solution to ask oneself what so-and-so said, what he meant to say, what he thought, rather than to ask oneself what is to be thought in and for the present time. Certainly, we always reflect while aided by others, and with others. But when one reduces political reflection to dwelling upon the past, to commentary upon previous works, political thought itself atrophies. And yet, the present work also breaks away from the anti-historical temptation that frequently characterises philosophical works in the Anglo-Saxon world. A result of the legacy of English empirical philosophy (which, traditionally speaking, is not very history oriented), of the specific cultural background of the New World, and of the importance granted to analytical philosophy, that temptation ends up creating repetitious situations. One is reduced to various forms of historical ignorance and amnesia, which must be avoided as much as possible.
- Finally, to broach the question of legitimacy is to take the theme of right seriously and to interrogate oneself about the conditions that make for the just exercise of political command. To tackle this question is therefore to go against an orientation that has been cultivated to excess in certain French intellectual and academic circles: that is, a refusal to recognise the connection legal authority has with justice. This situation can be explained by the combined action of positivism, which does not connect law to the substantive dimension of values, and of Marxism, whose critique of legal authority is well known. But it can also be explained by the relationships that exist in France between law and the State, as well as by the resulting status legal training enjoys there. The fact that, inside the French Hexagon, law turns out to be intimately tied up with the State – a situation quite different from what obtains in the United States, for example, where the birth of the State does not proceed the unfurling of democratic ideals and where the State does not dominate civil society as much as it does in France – as well as the conservative tendencies of law schools, has not facilitated the flowering of a balanced form of legal reflection. It is, moreover, in part for this reason that the

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philosophy of law remains a discipline that has hardly developed at all in France. To put it briefly: law has for a long time been either discredited or revered there, on account of its alliance with the State.

Reflecting upon legitimacy consequently amounts to taking an interest in law from a perspective that is not traditionally adopted in France. Of course, with the ebbing of left-wing ideologies, a growing number of serious works are today being devoted to law. Unfortunately, too often these works are content to adopt as their own an attitude that equates the State and law, sometimes they even go further and adorn the latter with all possible virtues, following in this way a see-saw movement that has become customary in the history of thought. It is more judicious, however, to ask oneself under what conditions law satisfies the requirements of justice.

To analyse legitimacy in connection with the dimension of values is to pose the question of the Good in politics and boils down to rehabilitating a normative type of reflection on politics – without, for all that, throwing overboard all the components of positivist analyses. In other words, it is a matter of setting political reflection back on the rails from which political realism, in particular, had driven it: those of responsibility and commitment [*engagement*]. While still being concerned with analysing and comprehending human reality, this approach also aims at fulfilling certain values, including dignity. Without proposing rules of thought and of conduct, one of the ambitions of the present work is, in effect, to show that it is neither possible nor desirable to exclude values, the faculty of judgement, and the question of the Good from political reflection.

In France, the role of formulating analyses that are expressive of value judgements is traditionally entrusted to the intellectuals. The race to strike a pose, as is encouraged by the TV economy, and the highly polemical character of debates over ideas in that country have reinforced this *de facto* situation. Researchers and academics find it all the more difficult to make their voices heard as their very conception of science tends to forbid them from taking a position. In such a context, the present work is animated by the concern to defend and to advance the idea that science is not indifferent to the world in which it evolves and that it attempts to contribute towards the betterment of that world. If we are to believe Marcel Mauss,<sup>1</sup> in science one cannot proceed too slowly, and in matters of practice one cannot wait; it is therefore by advancing at an average speed, which is imposed by taking these two dimensions into account,

<sup>1</sup> Marcel Mauss, *Œuvres*, 3 vols. (Paris: Minuit, 1981), vol. III, *Cohésion sociale et divisions de la sociologie*, pp. 579–80.

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that political reflection will best be able to confront the truth and the world in which the truth unfolds.

To proceed in this way is therefore to take a detour in order to tackle those questions whose burning character is underscored by the course of contemporary political events. This is a detour that may seem quite long for someone who wants to have immediate answers. Experience shows, however, that patience and the establishment of some distance most often allows one to elucidate that which would not have been seen, had one cast too close and too hurried a glance.

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## 1 What is political legitimacy?

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### DEFINITION OF LEGITIMACY: THE RIGHT TO GOVERN

The problem of legitimacy, which is central in politics, is not the exclusive property of any one discipline. Philosophy and political science, law, sociology, and political anthropology have all made of it a privileged object of research. The breadth of the literature on this theme suffices to prove the point. With each discipline representing a specific way of understanding reality, it is not surprising that the various points of view being advanced offer marked differences. And if one compares the works of various authors or schools of thought, one finds, even within a given discipline, some major divergencies. Despite these, there exists a common ground for understanding: the idea of legitimacy concerns first and foremost the right to govern. Legitimacy is the recognition of the right to govern. In this regard, it tries to offer a solution to a fundamental political problem, which consists in justifying simultaneously political power and obedience.<sup>1</sup>

To justify power and obedience simultaneously is the first issue involved in the question of legitimacy. Upon this twofold demonstration depend both the right to govern and what results therefrom, political obligation. But in order for this operation to be successful, it has to fulfil at least three complementary conditions that have to do with the domains of consent, law, and norms, these being in reality indissociable. An examination of these three notions will allow one to see in what way they are constitutive of legitimacy.

### **Consent and legitimacy: from right to political authority**

To define legitimacy as the right to govern assumes that consent plays a major role therein. A study of the public character of right allows one better to comprehend this argument.

<sup>1</sup> See Raymond Aron, *Democracy and Totalitarianism: A Theory of Political Systems*, ed. Roy Pierce, trans. Valence Ionescu (Ann Arbor, Mich.: Ann Arbor Paperback, 1990), p. 24.