

# The Legitimation of Power

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# 1 Towards a Social-Scientific Concept of Legitimacy

The exercise of power by one person over others, or by one group over another, is a basic and recurrent feature of all societies. Those who are subordinate experience it as constraining, often humiliating and sometimes life-threatening; and many would escape it if they could. Those who hold power, or seek to do so, are themselves frequently at odds with one another over the scope of their power and the control over their subordinates, with potentially damaging consequences. Power, in other words, is a highly problematical, as well as recurrent feature of human societies. And because it is so problematical, societies will seek to subject it to justifiable rules, and the powerful themselves will seek to secure consent to their power from at least the most important among their subordinates. Where power is acquired and exercised according to justifiable rules, and with evidence of consent, we call it rightful or legitimate.

How far power is legitimate, what makes it so, and why it matters: these are all inherently difficult and contentious questions. They have at various times and places seriously exercised those involved in power relations, especially in periods of legal uncertainty, moral disagreement or intense social and political conflict. These questions have also been the special concern of different groups of professionals – legal experts, moral or political philosophers, social scientists, to name but three – who have each approached them from a different focus of interest, and have tended to employ different conceptions or definitions of legitimacy according to their respective professional standpoint. So in addition to the inherent difficulty of deciding what makes

power legitimate, there is the extra complication of divergent definitions offered by different groups of professionals. It is this double layer of complexity that makes the subject of legitimacy so confusing.

In unravelling this complexity, I shall begin with the different professionalisms, or academic specialisms as we could call them, since this will provide the best point of departure for understanding what the subject of legitimacy is about. To begin with, legal experts, and especially constitutional lawyers, are concerned with the resolution of legal disputes about power: how it is validly acquired, who is entitled to exercise it, within what limits, and so on. Their special expertise and focus of interest is with the definition and interpretation of legal rules, and with how these are initiated, revised and enforced. For them, power is legitimate where its acquisition and exercise conform to established law. For them legitimacy is equivalent to *legal validity*.

Now there is an obvious sense in which we would all recognise legal validity as an important aspect of legitimacy. A recurrent context in which the terms 'legitimate' and 'illegitimate' have traditionally been used has been in relation to children, and whether they have been conceived within a legally authorised marriage or not. This question has historically derived its significance from its relation to issues of power, and in particular to disputes about the succession to property and position. In societies where the chief mode of access to power is through birth, it becomes of supreme importance to determine who is the legitimate, i.e. legally valid, heir to an estate or a dynasty. And what applies to power based on heredity applies with equal force to any other system of power; the mode of access to it, as well as its scope and duration, require social regulation, and the characteristic means of doing so is through legal rules. To say that the power a person has was legally acquired and is exercised within the law, is a first condition of its legitimacy.

However, if legal validity is a recognisable element in legitimacy, it cannot by any means exhaust it. Disputes about the legitimacy, or rightfulness, of power are not just disputes about what someone is legally entitled to have or to do; they also involve disagreements about whether the law itself is justifiable, and whether it conforms to moral or political principles that are rationally defensible. Are the relations of power, of dominance

and subordination, which the law sustains, are the rules that determine access to positions of power or the means of exercising it, themselves rightful? If not, are we obliged to obey them, or to cooperate with the powerful, on any other grounds than a prudent calculation of our own self-interest? These moral questions and practical dilemmas about power go deeper than the question of its legal validity; they concern the justification for the law itself. It is not what the law actually prescribes, but what it ought to prescribe, that is here the central issue of legitimacy.

Now, the question of how power relations within a society ought to be arranged, and what would count as a sufficient justification to require the support of the subordinate for them, has been the special concern of moral and political philosophy. Some philosophers have been primarily apologetic, seeking justifications for an existing structure of power; others have been critical, exposing its deficiencies, and advocating revisions or alternatives to it. Yet what they share is the project of elucidating the most general principles – of justice, of right, of social utility – necessary to the justification of power relations; and also, in the modern period at least, of specifying what conditions have to be met if those subject to power can be said to have consented to it, and so be morally obliged to obey or support it. For the moral and political philosopher, power is legitimate where the rules governing it are justifiable according to rationally defensible normative principles. And as with any moral principles, these embody a universalising claim; it is not the principles that happen to pertain in a given society that are sufficient, but those that any rational person, upon considered and unbiassed reflection, would have to agree to. What is 'legitimate' to the philosopher, then, is what is morally justifiable or rightful; legitimacy entails the moral justifiability of power relations.

If we turn, finally, to the social scientist, we see a different focus of interest from those of the legal expert or moral philosopher. The social scientist's concern is not with solving legal disputes or moral dilemmas about power, or helping others to do so; it is rather with identifying the empirical consequences that legitimacy has for the character of power relations, for the different ways in which they are organised, and for the extent to which the powerful can actually count on the obedience or support of those subordinate to them. The social scientist's purpose,

in other words, is primarily an explanatory one. An understanding of legitimacy helps explain, for example, why people have the expectations they do about a power relationship, why institutions of power differ systematically from one type of society to another, why power is exercised more coercively in some contexts than in others. Above all, it helps explain the erosion of power relations, and those dramatic breaches of social and political order that occur as riots, revolts and revolutions. It is not just because these events are particularly dramatic and fateful that they interest the social scientist. As with so much else about society, it is only when legitimacy is absent that we can fully appreciate its significance where it is present, and where it is so often taken for granted.

What, then, is legitimacy for the social scientist? What makes power legitimate? Social scientists, unlike moral or political philosophers, are concerned with legitimacy in particular historical societies rather than universally; with legitimacy in given social contexts rather than independent of any particular context; with actual social relations rather than ideal ones. They are only too aware that what makes power legitimate in one society may differ from others, and that the criteria for legitimacy in one may be rejected by another. Moreover, they are trained to stand back from their own values and beliefs so as better to understand those of others. As individuals they may be convinced by philosophical anarchism, but this position will not help them understand the legitimacy of the modern state, or distinguish where it is, from where it is not, legitimate. As individuals they may regard all religious beliefs as rationally unfounded and indefensible, but such a judgement will not help them understand the legitimacy of the late Ayatollah Khomeini. What matters for an adequate understanding is not what they personally believe, but what is believed in the society they are studying. For this reason most social scientists in the twentieth century have followed Max Weber in defining legitimacy as the *belief in legitimacy* on the part of the relevant social agents; and power relations as legitimate where those involved in them, subordinate as well as dominant, believe them to be so (Weber, 1968, p. 213).

At this point in the discussion it is important that I make clear what sort of book this is going to be. It is not intended as a work of legal theory or political philosophy, as I have characterised

them above. In particular, it is not about political obligation as philosophers would treat it. My purpose is not to clarify the moral dilemmas of citizens faced with the choice of whether or not to break the law. This is not because I consider such issues unimportant or unamenable to rational argument. It is because my concern is with the different, social-scientific question: what are the causes and consequences of people's disobedience? That is to say, I am concerned with legitimacy as a problem for social science rather than for political philosophy.

There are a number of reasons for my choice. The first is that, although I am a political philosopher as well as a social scientist, I believe that the two activities have a different purpose and a different logic, and neither is best served by confusing it with the other. This is not to say that there is no significant connection between the two activities; but the connection can only properly be defined, as I hope to show, by first carefully observing the distinction between them. My second reason is that handling normative topics, which is the everyday business of the philosopher, provides the severest challenge to the social scientist, and confronts him or her with the most acute methodological difficulties. Nowhere is it more essential to overcome these difficulties than in the study of power relations, which because of their importance carry such a potential for obfuscation. On both methodological and substantive grounds, then, the subject of legitimacy must count as one of the central issues of social science. My third reason is that social scientists have in fact been thoroughly confused about legitimacy, and their confusion has its starting point in their failure to conceptualise it adequately, or to offer a coherent account of what makes power legitimate in particular societies. If that judgement sounds like arrogance on my part, it is also a confession: I have been thoroughly confused myself. The following discussion, which seeks to identify the confusion and offer a convincing resolution of it, is also the record of a personal journey out of the maze which this subject represents.

The source of the confusion lies with the work of Max Weber. It is one of the most remarkable features about the study of legitimacy in politics departments, at least in the Anglo-Saxon world, that it is suspended between two separate bodies of literature that have absolutely no connection with one another. If you

are studying legitimacy as a subject in political philosophy you will probably start with Thomas Hobbes, if not earlier, and proceed through the great tradition which includes Locke, Rousseau, Hegel and others. If you are studying it as a subject in political science or political sociology you will most likely begin with Max Weber, and may not discuss other thinkers at all, but proceed to a series of empirical case studies of power relations and theoretical explanations for obedience and disobedience. I will return to the problems exposed by this extraordinary disjunction later; but for the moment my starting point as a social scientist has to be with Weber, rather than with the earlier theorists.

Max Weber is rightly regarded as one of the 'founding fathers' of twentieth-century social science, and his influence across a range of disciplines and subjects has been enormous, and usually beneficial, even where later thinkers have disagreed with him. On the subject of legitimacy, however, it has to be said that his influence has been an almost unqualified disaster. The starting point of what is wrong lies in his definition of legitimacy. For a social scientist to say that a given power relation is legitimate, Weber argues, is not to make a moral judgement about it in the manner of the philosopher; it is rather to make a report (which may be empirically true or false) about other people's *beliefs*. Power is legitimate where those involved in it believe it to be so; legitimacy derives from people's belief in legitimacy. So, he writes, legitimacy is equivalent to 'Legitimitätsglaube' (a belief in legitimacy); and legitimate power is power 'als legitim angesehen' (that is regarded as legitimate) (Weber, 1956, pp.23, 157, 659; 1958, p.493).

What is wrong with this formulation can be seen most clearly from what other social scientists have made of it. Social scientists are, by training, dismissive of universal truths and values; they are only too aware of the variety of beliefs held from one society to the next, and from one historical epoch to another. They become sceptical about the possibility of any rational grounding for normative ideas or value systems, which they frequently label as 'myths', 'prejudices' or 'ideologies'. Such scepticism leads them in turn to concentrate on the processes of socialisation, the structures of influence, the agencies of dissemination whereby ideas come to be acquired and reproduced. The beliefs people

hold are thus explained as the product of the cumulative influences to which they have been exposed.

Such an explanation appears particularly plausible in an age of propaganda and public relations, when the public sphere is dominated by an emphasis on presentation over reality. If people believe in the legitimacy of power, is this not because the powerful have been successful in the public relations campaign, because they have managed to convince people that they are legitimate, because their 'legitimations' have been accepted? Is the question of their legitimacy not therefore in the hands of the powerful themselves? So S.M. Lipset, in typically Weberian vein, defines the legitimacy of a political system as its capacity 'to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society' (1958, p.86). And R. Merelman calls legitimacy 'a quality attributed to a regime by a population. That quality is the *outcome* of the government's capacity to engender legitimacy' (1966, p.548). Taken to their logical conclusion, such definitions would imply that the reason for the collapse of the communist regimes in Eastern Europe in 1989 lay in a deficiency of public relations, rather than anything actually wrong with the system of rule itself.

At this point political philosophers become indignant with social scientists and their Weber-inspired definitions, which transform the issue of legitimacy from a question about the actual characteristics of a system of power into one concerning the beliefs people hold about it. In so doing, it is argued, they are emptying the concept of legitimacy of any objective reference or moral content, and in effect acquiescing in the very manipulations of the powerful that they are concerned to describe. 'The new definitions', writes J.H. Schaar, 'all dissolve legitimacy into belief or opinion. If a people holds the belief that existing institutions are "appropriate" or "morally proper," then those institutions are legitimate. That's all there is to it'. (1969, p.284). Hannah Pitkin in turn draws attention to the epistemological consequences of such a definition: 'In seeking to insulate the sociologist from the context of judging and taking a position', she writes, 'Weber in effect made it incomprehensible that anyone might judge legitimacy and illegitimacy according to rational, objective standards' (1972, p.283). And Robert Grafstein points to the abandonment of moral judgement entailed by the Weberian



approach: 'The concept should properly signify a normative evaluation of a political regime: the correctness of its procedures, the justification for its decisions, and the fairness with which it treats its subjects. In Weber's hands, however, legitimacy no longer represents an evaluation of a regime; indeed it no longer refers directly to the regime itself' (1981, p.456).

These criticisms seem to me entirely justified in pointing to the reductionist conclusions that can be drawn from the Weberian definition of legitimacy. Yet they are also mistaken if they imply, as they seem to, that the social scientist ought to become a moral or political philosopher, and engage in evaluating a regime against independent normative standards. The problem with the Weberian definition is not that it fails to meet the criteria of normative philosophy, but that it encourages bad social science. And one reason it does so is that it leaves the social scientist with no adequate means of explaining why people acknowledge the legitimacy of power at one time or place and not another. The social scientist, it seems, is someone who must always be taken by surprise when people stop treating power as legitimate and take to the streets in protest.

Now it can be argued in Weber's defence that his social-scientific definition of legitimacy as the 'belief in legitimacy' need not have the reductionist and manipulative implications I have described above, and that all I have offered is a caricature of his position. What is mistaken, it could be said, is to divorce people's beliefs about legitimacy from their *grounds* or *reasons* for holding them; and these are to be found precisely in the actual characteristics of a regime, such as its conformity to their values, its ability to satisfy their interests, and so on. Did not Weber himself explore the different grounds for people's belief in legitimacy in his analysis of the rational-legal, traditional and charismatic principles of authority? And would not a social scientist who was alert to the actual inadequacies and processes of degeneration of a regime be able, if not to predict, then at least adequately to explain, the erosion of belief in its legitimacy? The mistake, in other words, is not Weber's, but that of those social scientists who have reduced the explanation of beliefs to the processes and agencies of their dissemination and internalisation, rather than an analysis of the factors which give people sufficient grounds or reasons for holding them.

I have some sympathy with such a reply. In particular, I shall, myself, at various points in this work be analysing people's beliefs and examining their reasons for holding them. Yet the above reply is still handicapped by the Weberian definition of legitimacy as the 'belief in legitimacy', within whose orbit it remains. What is wrong with this definition is, first, that it misrepresents the relationship between beliefs and legitimacy; and, secondly, that it takes no account of those aspects of legitimacy that have little to do with beliefs at all. This brings me now to the heart of the matter.

The first objection to the Weberian definition of legitimacy – which could be called the 'received' definition, since almost all social scientists have adopted it – is that it misrepresents the relationship between legitimacy and people's beliefs. A given power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of* their beliefs. This may seem a fine distinction, but it is a fundamental one. When we seek to assess the legitimacy of a regime, a political system, or some other power relation, one thing we are doing is assessing how far it can be justified in terms of people's beliefs, how far it conforms to their values or standards, how far it satisfies the normative expectations they have of it. We are making an assessment of the degree of congruence, or lack of it, between a given system of power and the beliefs, values and expectations that provide its justification. We are not making a report on people's 'belief in its legitimacy'.

An example will clarify the point I am making. It is argued that the British electoral system, with its first-past-the-post rules determining who shall be elected in each constituency, is losing its legitimacy, and to an extent therefore also weakening that of the governments elected under it. This is not because of any shift in people's beliefs, but because the rules have increasingly delivered results that diverge, both regionally and nationally, from the proportion of votes cast, and hence from accepted notions about the representative purpose of elections in a democracy. It is the increasingly unrepresentative character of the electoral system, and its consequent vulnerability to attack in a society that believes in representation, that is the basis for the weakening legitimacy of governments appointed under it. The vulnerability was there before it was exploited, and the weakening of

legitimacy took place before people publicly acknowledged it. It may have taken the poll-tax legislation to bring the issue to the forefront of public attention. But the potential for doing so was already present in the growing discrepancy between the rules and the beliefs or values underpinning them. It is this discrepancy that is important to an analysis of legitimacy; what has occurred cannot be made intelligible in terms of a shift in people's beliefs about legitimacy or 'belief in legitimacy'.

The Weberian definition not only misrepresents the role that beliefs play in legitimacy. In making legitimacy primarily a matter of belief, it also ignores those elements which are not really to do with beliefs at all. I have already mentioned legality as an important component of legitimacy. Whether power is or is not acquired and exercised within the law is a question quite independent of people's beliefs; it is a matter of judicial determination. Or consider another element in legitimacy that I have so far only touched on: that of consent. Despite the confusion that some political philosophers have created with the notion of 'tacit consent' (e.g. Locke, 1967, pp.365-7), what is important for legitimacy is evidence of consent expressed through *actions* which are understood as demonstrating consent within the conventions of the particular society, such as: concluding an agreement or entering into a contract with a superior party; swearing an oath of allegiance; joining in acclamation; voting in an election or plebiscite; and so on.

Why are such actions important? It is not that they provide evidence of people's 'belief in legitimacy'. Consent can be given from a variety of different motives, including considerations of personal self-interest. What is important about these actions is that they *confer* legitimacy; they contribute to making power legitimate. They do this both through the public demonstration of people's consent to the power relationship, and through the resulting obligations that derive from them on the part of both dominant and subordinate alike. They possess simultaneously a symbolic and a normative force.

Contributing to legitimacy, then, are to be found a number of different factors, operating at different levels. There is the legal validity of the acquisition and exercise of power; there is the justifiability of the rules governing a power relationship in terms of the beliefs and values current in the given society; there is

the evidence of consent derived from actions expressive of it. These factors, successively and cumulatively, are what make power legitimate. To the extent that they are present, it will be legitimate; to the extent that they are absent, it will not. Together these criteria provide grounds, not for a 'belief in legitimacy', but for those subject to power to support and cooperate with its holders; grounds, that is to say, not for belief, but for obligation.

It follows that the social scientist, in concluding that a given power relationship is legitimate, is making a *judgement*, not delivering a *report* about people's belief in legitimacy. The Weberian definition not only misconceives the nature of legitimacy; it also proposes a quite misleading research strategy for determining whether power is legitimate: that of asking people whether they believe it is. Apart from the problem of expecting ordinary people to understand what legitimacy means, when social scientists have such difficulty themselves with the concept, this strategy involves looking in the wrong place. Is power valid in terms of the law? Is the law justifiable in terms of the beliefs and values established in the society? Is there demonstrable evidence of consent to the given relations of power? All these questions can in principle be answered from evidence in the public domain. This is not to say that the answers may not on occasion prove contradictory, or that the evidence will not need careful interpretation. But the point is that the evidence is available in the public sphere, not in the private recesses of people's minds. And when we have answered the questions given above, the further question 'do people believe in the legitimacy of a given power?' becomes redundant.

If the social scientist, then, in considering the legitimacy of a given power relation or system, is necessarily involved in offering an assessment, in making a judgement, what kind of judgement is it, and how does it differ from those of the lawyer and the philosopher? Unlike the lawyer, the social scientist is interested in much more than legal validity; he or she is interested in the normative standing of the power arrangements that the law validates. Unlike the moral or political philosopher, on the other hand, the social scientist assesses these arrangements not against independent or universal criteria of the right or the good, but against those that pertain within the society in question; he or she does not assess actions expressive of consent against ideal

conditions or ideal criteria for consent, but in relation to the conventions of the particular society. Legitimacy for social scientists is always legitimacy-in-context, rather than absolutely, ideally or abstractly. It is this that enables them to give a coherent account of legitimate power in societies other than their own, and to assess the degree of legitimacy of political systems far removed in time and space (Lowenthal, 1979, pp.401-2).

However, although the criteria of legitimacy the social scientist employs are different from those of the lawyer and the philosopher, they are also connected to them, as the account I have given should make clear. The social scientist will need to extend the lawyer's criterion of legal validity in the same way as the philosopher does; he or she will in turn need to contextualise the criterion of normative justifiability used by the moral or political philosopher. Yet in each case it will be the same *kind* of criteria that will be looked for. Because of this, the account of legitimacy that I have offered, unlike that of Weberian social science, can where relevant draw upon different traditions of legal and political theorising respectively, rather than remain completely divorced from them. It will also be able to give a coherent account of the roles of the lawyer and the philosopher at key moments of uncertainty and dispute about the legal or moral bases of legitimacy in given historical societies.

Let me sum up the argument so far. The account I have given seeks to distinguish a properly social-scientific judgement about legitimacy-in-context from both the misleading Weberian strategy of reporting people's belief in legitimacy on the one side, and the normative-philosophical project of elucidating independent criteria of justifiability, or ideal conditions for consent on the other. The inadequacies I find in both, from the *social-scientific point of view*, are similar to those discussed by Habermas in his article 'Legitimation problems in the modern state', in which he rejects both what he calls 'the empiricist' and the 'normativist' concepts of legitimacy:

'The one can be employed in the social sciences but is unsatisfactory because it abstracts from the systematic weight of grounds for validity; the other would be satisfactory in this regard but is untenable because of the metaphysical context in which it is embedded.' (1979, p.204)

At the same time, he goes on, a Rawlsian approach which seeks to define the procedural conditions (or ideal speech context) necessary to a rational consensus cannot provide the basis for analysing legitimacy in given historical societies:

'Every general theory of justification remains peculiarly abstract in relation to the historical forms of legitimate domination. If one brings standards of discursive justification to bear on traditional societies, one behaves in an historically "unjust" manner. Is there an alternative to this historical injustice of general theories, on the one hand, and the standardlessness of mere historical understanding, on the other?' (ibid. p.205)

Habermas' own answer to this question – the key question about legitimacy for the social scientist – involves constructing a developmental sequence of historical forms of legitimation after the pattern of cognitive developmental psychology. I find his solution unsatisfactory, at least as a starting point for an analysis of legitimacy. This is because, in concentrating on the differences between different historical forms, rather than also on what they have in common, Habermas fails to give an account of the underlying structure and logic of legitimation in general, which must form the necessary basis for an exploration of what is historically variable and specific. My own starting point lies with this underlying structure of legitimacy, which I have already sketched out, and will consider more systematically in the section that follows. The reader who has experienced difficulty in following the discussion so far will, I hope, find the issues becoming progressively clearer as I proceed.

### **The different dimensions of legitimacy**

The key to understanding the concept of legitimacy lies in the recognition that it is multi-dimensional in character. It embodies three distinct elements or levels, which are qualitatively different from one another. Power can be said to be legitimate to the extent that:

- i) it conforms to established rules
- ii) the rules can be justified by reference to beliefs shared by both dominant and subordinate, and
- iii) there is evidence of consent by the subordinate to the particular power relation.

The first level is that of rules; the second that of justifications grounded on beliefs; the third that of actions. The three levels are not alternatives, since all contribute to legitimacy; all provide the subordinate with moral grounds for compliance or cooperation with the powerful. Each, however, is different, and has its own characteristic form of non-legitimacy. I shall say something further about each of them in turn.

i) The first and most basic level of legitimacy is that of rules, corresponding to the legal definition already discussed. Power can be said to be legitimate in the first instance if it is acquired and exercised in accordance with established rules. For convenience I shall call the rules governing the acquisition and exercise of power the 'rules of power'. These rules may be unwritten, as informal conventions, or they may be formalised in legal codes or judgements. Pressure towards formalisation arises in most societies from the need to resolve disputes about power by making the rules both precise and strictly enforceable, but there still remains a considerable role for convention, or 'custom and practice', even where legal formalisation is well advanced. There also remains considerable scope for dispute about the law, though a characteristic feature of legal systems is the presence of an ultimate authority whose rulings are acknowledged as final.

The opposite of legitimacy according to the rules is, simply, *illegitimacy*; power is illegitimate where it is either acquired in contravention of the rules (expropriation, usurpation, coup d'état), or exercised in a manner that contravenes or exceeds them. The illegal acquisition of power usually has more profound, because more all-pervasive, consequences for legitimacy than some breach or contravention in its exercise, though that depends upon the seriousness of the breach, and whether it is repeated. Where the rules of power are continually broken, we could speak of a condition of chronic illegitimacy.

ii) On its own, legal validity is insufficient to secure legitimacy, since the rules through which power is acquired and exercised themselves stand in need of justification. This is the second level of legitimacy: power is legitimate to the extent that the rules of power can be justified in terms of beliefs shared by both dominant and subordinate. What kinds of justification and what kinds of belief are needed? To be justified, power has to be derived from a valid source of authority (this is particularly true of political power); the rules must provide that those who come to hold power have the qualities appropriate to its exercise; and the structure of power must be seen to serve a recognisably general interest, rather than simply the interests of the powerful. These justifications in turn depend upon beliefs current in a given society about what is the rightful source of authority; about what qualities are appropriate to the exercise of power and how individuals come to possess them; and some conception of a common interest, reciprocal benefit, or societal need that the system of power satisfies.

No society is characterised by a complete uniformity of beliefs. Indeed, one of the distinctive features of power relations is the difference of circumstances, opportunities and values between dominant and subordinate groups. Yet without a minimum of the appropriate beliefs defined above being shared between the dominant and the subordinate, and indeed among the subordinate themselves, there can be no basis on which justifications for the rules of power can find a purchase. Naturally what counts as an adequate or sufficient justification will be more open to dispute than what is legally valid, and there is no ultimate authority to settle such questions; nevertheless clear limits are set by logic and the beliefs of a given society to what justifications are plausible or credible within it.

This second level or dimension of legitimacy has its corresponding negative or opposite. Rules of power will lack legitimacy to the extent that they cannot be justified in terms of shared beliefs: either because no basis of shared belief exists in the first place (e.g. slavery, 'artificial' or divided communities); or because changes in belief have deprived the rules of their supporting basis (e.g. hereditary rule or male power, in face of a declining belief in the superior qualities supposedly ascribed by birth or sex); or because changing circumstances have made



existing justifications for the rules implausible, despite beliefs remaining constant (the example of the British electoral system discussed on pages 11–12). These different situations clearly have widely differing significance, but they can all be described as examples, not so much of illegitimacy, as of *legitimacy deficit* or weakness.

iii) The third level of legitimacy involves the demonstrable expression of consent on the part of the subordinate to the particular power relation in which they are involved, through actions which provide evidence of consent. As I argued earlier, the importance of actions such as concluding agreements with a superior, swearing allegiance, or taking part in an election, is the contribution they make *to* legitimacy. They do this in two ways. The first is that they have a subjectively binding force for those who have taken part in them, regardless of the motives for which they have done so. Actions expressive of consent, even if undertaken purely out of self-interest, will introduce a moral component into a relationship, and create a normative commitment on the part of those engaging in them. Secondly, such actions have a publicly symbolic or declaratory force, in that they constitute an express acknowledgement on the part of the subordinate of the position of the powerful, which the latter are able to use as confirmation of their legitimacy to third parties not involved in the relationship, or those who have not taken part in any expressions of consent. They are thus often associated with impressive forms of ceremonial.

Now some theorists would argue that consent is a distinctively modern component or condition of legitimacy, and one that is specific to the liberal or individualist tradition; it therefore cannot be relevant to an understanding of legitimacy in other historical societies. However, this is to narrow the concept of consent to the criteria pertaining in an individualist culture: namely, that it should be linked to an individual choice between alternatives (e.g. between alternative possible husbands, employers or governments), and that all adults are in principle qualified to give consent. The fact that the criterion of choice between alternative 'superiors' does not necessarily pertain in other societies does not mean that there are not other conventional forms of expressing consent appropriate to those societies. And in most historical

societies only some among the subordinate have been qualified to give consent; as I shall show later, the qualification is typically related to the category of the 'free' in the sphere of social and economic power relations, and to those who count as members of the political community in the sphere of politics. Moreover, in a pre-individualist age it was taken for granted that some adult males could give consent on behalf of other people (their wives, children, clients, tenants, even descendants) in a manner that would be unacceptable in a more individualist culture, unless those involved were acting in an explicitly representative capacity. What counts as consent, therefore, and from whom it is required to confer legitimacy on the powerful, is itself a culturally specific matter, determined by the conventions of a given society, rather than definable absolutely. What is common to legitimate power everywhere, however, is the need to 'bind in' at least the most significant members among the subordinate, through actions or ceremonies publicly expressive of consent, so as to establish or reinforce their obligation to a superior authority, and to demonstrate to a wider audience the legitimacy of the powerful.

It is in the sense of the public actions of the subordinate, expressive of consent, that we can properly talk about the 'legitimation' of power, not the propaganda or public relations campaigns, the 'legitimations' generated by the powerful themselves. And if the public expression of consent contributes to the legitimacy of the powerful, then the withdrawal or refusal of consent will by the same token detract from it. Actions ranging from non-cooperation and passive resistance to open disobedience and militant opposition on the part of those qualified to give consent will in different measure erode legitimacy, and the larger the numbers involved, the greater this erosion will be. At this level, the opposite or negative of legitimacy can be called *delegitimation*.

For power to be fully legitimate, then, three conditions are required: its conformity to established rules; the justifiability of the rules by reference to shared beliefs; the express consent, of the subordinate, or of the most significant among them, to the particular relations of power. All three components contribute to legitimacy, though the extent to which they are realised in a given context will be a matter of degree. Legitimacy is not an

all-or-nothing affair. For this reason I used the formula above: *power can be said to be legitimate to the extent that ...* etc. Every power relation knows its breaches of the rules or conventions; in any society there will be some people who do not accept the norms underpinning the rules of power, and some who refuse to express their consent, or who do so only under manifest duress. What matters is how widespread these deviations are, and how substantial in relation to the underlying norms and conventions that determine the legitimacy of power in a given context. Legitimacy may be eroded, contested or incomplete; and judgements about it are usually judgements of degree, rather than all-or-nothing.

Above all, the analysis I have given above demonstrates that legitimacy is not a single quality that systems of power possess or not, but a set of distinct criteria, or multiple dimensions, operating at different levels, each of which provides moral grounds for compliance or cooperation on the part of those subordinate to a given power relation. By the same token, power can be non-legitimate in very different ways, which I have signalled by the different terms: illegitimacy, legitimacy deficit and delegitimation. The erosion of justificatory norms, slavery, conquest, dictatorship, coup d'état, separatist agitation, revolutionary mobilisation – all are examples where power lacks some element of legitimacy, but does so in very different ways. The accompanying diagram summarises in tabular form the different dimensions of legitimate and non-legitimate power that I have distinguished, to reinforce the argument of the text.

**Table 1.1** The three dimensions of legitimacy

Criteria of Legitimacy	Form of Non-legitimate Power
i conformity to rules (legal validity)	illegitimacy (breach of rules)
ii justifiability of rules in terms of shared beliefs	legitimacy deficit (discrepancy between rules and supporting beliefs, absence of shared beliefs)
iii legitimation through expressed consent	delegitimation (withdrawal of consent)

In analysing legitimacy into its component elements, I am claiming that these constitute basic criteria for legitimacy in all historical societies, past and present. In other words, if we want to know what makes power legitimate anywhere, it is to these criteria that we must look. Such a claim can only ultimately be vindicated by the persuasiveness of the explanatory analysis that follows in the rest of the volume. Here it is important to clarify what this claim does, and does not, entail.

At first sight it might seem that the claim that there are criteria of legitimacy universally applicable must contradict what I said earlier about the social scientist's task being to assess the legitimacy of power in its context, i.e. against the norms and values of a given society. In fact there is no contradiction. The criteria distinguished above constitute only the most general framework, the specific content or substance of which has to be 'filled in' for each historical society. Is power valid according to the rules? The relevant rules have to be specified, their conventional or legal form established, the mode of adjudication pertinent to the given society determined, and so on. Are the rules justifiable in terms of the beliefs and norms of the particular society? Again the content of these beliefs will have to be specified; but the analysis given above, and elaborated later in Chapter 3, provides a guide to what we must look for: beliefs about a) the valid source of authority (tradition, the people, divine authorisation, etc.); b) how people come to possess the qualities appropriate to the exercise of power (heredity, achievement, etc.); c) the ends that power should serve (variable according to gender, class, political power, etc.). Moreover the form in which these beliefs are reproduced and authenticated will also vary systematically from one age or society to another: myths and story telling, divine revelation, philosophical argument, scientific 'proof'. Is there, finally, evidence of expressed consent on the part of those qualified to give it? Again, who counts as qualified, and what actions count as appropriate, will be determined by the conventions of the given society or system of power.

What we have, then, is a set of general criteria for legitimacy, the specific content of which is historically variable, and must therefore be determined for each type of society. This combination of a general category, with variable and historically specific forms, is a common feature of comparative analysis in the

social sciences. Consider for example the Marxian concept of class. Marx was insistent that it was the historical differentiation between different forms of class society (slave, feudal, capitalist) that was crucial to understanding the specific dynamic of each. But the differentiation was only possible in the first place by being based upon a theoretically elaborated *general* concept of class, as a relationship between the direct producers and the owners of the means of production, in which the latter appropriated a surplus from the labour of the former. An understanding of this general category, according to Marx, provided the key to the analysis of class relations in each historically specific mode of production (Marx, 1966, vol.3, pp.790-2).

A closer parallel would be that provided by Barrington Moore in his book *Injustice*, where he identifies, beneath the variability of social norms and arrangements in different historical periods, 'recurring elements' in their moral codes (Moore, 1978, ch.1). In a similar manner I am proposing that there is an underlying structure of legitimacy common to all societies, however much its content will vary from one to the other. What explains this common structure? As I shall show more fully later, it has its origin in the different ways in which power that is not legitimate offends our moral sense; in an underlying logic common to moral argument everywhere, however diverse its actual content; and in the needs that are shared by all societies, however varied the social relations and organisational arrangements by means of which they are met. It is these common features – of human beings as rational moral agents seeking to ensure that their social relations and arrangements meet their needs and conform to their moral sense – that provide the underlying structure to legitimacy everywhere.

The structure that I have so far merely outlined, comprising rule-conformity, the justifiability of the rules in terms of shared norms and beliefs, expressed consent on the part of those qualified, provides the social scientist with the framework to undertake two different tasks. The first is a systematic comparison between different forms of legitimacy appropriate to different historical types of social and political system. The assumption made here is that rules or arrangements of power *embody* justificatory beliefs or norms, and conventions about consent, even if they may come to diverge from them over time, or the beliefs

themselves become atrophied. Here is the second task which the above structure provides the basis for: that of assessing the degree of legitimacy-in-context of a given power relationship, as a necessary element in explaining the behaviour of those involved in it. This is the immanent judgement or assessment of the social scientist, as opposed to the normative philosopher's assessment of a power relationship against independent, external standards or criteria. And this judgement also becomes an immanent *critique* when the social scientist is able to show the features internal to a system of power that, on the one hand, sustain and reproduce its legitimating beliefs, or, on the other, systematically undermine them over time.

The value of the multi-dimensional conception of legitimacy in facilitating the fulfilment of such an agenda stands in marked contrast to the Weberian conception considered in the previous section. Although Weber himself made a modest contribution to the first part of the agenda outlined above, the conception of legitimacy that he bequeathed to twentieth-century social science was inadequate for the purpose, and quite useless for the second, more critical, task of analysis and explanation. This is because the conception that power is legitimate if people believe it to be so, is mistaken on a number of grounds, which can now be summarised. It reduces legitimacy from a complex of factors which give people good grounds for compliance, to a single dimension: their 'belief in legitimacy'. It misconceives the relationship between legitimacy and the beliefs that provide the justificatory basis for rules of power. It fails to recognise that, although prudential and normative reasons for obedience are indeed distinct, nevertheless, people's interests can be harnessed to legitimacy through actions expressive of consent. Finally, it leaves the social scientist helpless in the critical task of analysing an erosion of legitimacy in power relations, by proposing a report on people's 'belief in legitimacy' rather than identifying a developing discrepancy between rules of power and the norms that provide their justification.

I said earlier that Weber's definition of legitimacy was only the starting point of what was wrong with his theory. The problem of his definition works through into his threefold typology of legitimate authority: traditional, rational-legal and charismatic (Weber, 1968, pp.215-16). If I also continue my critique of

Weber at this point it is not because of any unreasoned animus on my part, but because of my conviction that it is necessary for social science to be freed from the whole Weberian legacy if it is to make sense of the subject of legitimacy. Social scientists since Weber have, if anything, been even more transfixed by his threefold typology than by his definition of legitimacy itself; indeed it has become a straightjacket into which, either singly or in combination, every example of legitimate power has, willy-nilly, to be forced.

True to his definition of legitimacy as the 'belief in legitimacy', Weber makes each of his types of legitimate authority – traditional, rational-legal, charismatic – dependent upon a different type of belief: in the sanctity of tradition, in rule-conformity and procedural correctness, and in the charismatic qualities of the individual leader, respectively. What is wrong with this, to put a complex matter briefly, is that it elevates each of the three contributory components of legitimacy, that I have distinguished above, into a separate and fully self-sufficient *type* of legitimacy (see Beetham, 1991). Thus, the first level of legal validity becomes a 'rational-legal' type, based upon a belief in rule-conformity and procedural correctness; in the process it becomes detached from any substantive beliefs or principles in relation to which the legal rules and procedures can be justified. Weber's traditional type, on the other hand, represents *one* example of a second level basis for the justification of rules (belief in the sanctity of the past); but the contrast with the rational-legal type obscures its true status, and conveys the misleading impression that power in a traditional order is not validated in terms of rules at all. At the same time the typology offers no account of the beliefs that have replaced traditionalism as a second-level basis for justifying rules of power in the modern world. The charismatic type, thirdly, represents the rare case of a legitimacy deriving solely from consent, in the absence of rules or justifying beliefs, a consent expressed in the act of acknowledging and following a leader. However, Weber's typology once more obscures its character, by making the basis of legitimacy not the act of recognition by a following, but their subjective belief in the 'charisma' of the leader, a concept that has had a particularly confused and unfortunate career.

In each case, Weber's typology represents the elevation of a different level of legitimacy into a self-sufficient type, in a way that

obscures the status of each as but one element in a totality. Once this process is understood, it becomes clear why the typology has proved both plausible to later social scientists, and at the same time such a potent source of confusion. Its plausibility derives from the fact that the typology embodies three genuine components of legitimacy; the confusion from the fact that it does so in a distorted form, whereby the proper status of each component has become obscured. True to Weber's conception of legitimacy as constituted by subjective beliefs, each element with its distinctive characteristics has been transposed into a different type of *belief*: in rules and procedures, in tradition, and in charisma respectively.

Other critics of Weber have had a sense of unease about his threefold typology, and the concept of charismatic authority in particular has met with repeated objections (e.g. Friedrich, 1961; Wolpe, 1968; Bensman and Givant, 1975). Yet the typology continues to hold the field, with or without qualification, because the source of Weber's error has not been clearly identified, and no convincing alternative has been proposed. I hope I have said enough, if not more than enough, to convince the reader that there is indeed an alternative approach to the subject; and that the whole Weberian theory of legitimacy has to be left behind as one of the blindest of blind alleys in the history of social science, notable only for the impressiveness of the name that it bears, not for the direction in which it leads. That at any rate is the course that I propose to follow in the remainder of this book, in which the name of Weber will hardly be mentioned again. The final introductory task will be to explain more fully why the analysis of legitimacy, such as I have offered, is so important to an understanding of power relations.

### **The significance of legitimacy**

Legitimacy, as we have seen, comprises the moral or normative aspect of power relationships; or, more correctly, the sum of these aspects. A social-scientific analysis of legitimacy is concerned with the effect it has on the character of a given relationship, and on the behaviour of those involved in it. It is the



importance of legitimacy – its character and degree – to explaining people's *behaviour* that concerns the social scientist.

To consider first the behaviour of those subordinate within a power relationship: its legitimacy provides them with moral grounds for cooperation and obedience. Legitimate power or authority has the right to expect obedience from subordinates, even where they may disagree with the content of a particular law or instruction; and subordinates have a corresponding obligation to obey. This obligation is not absolute – hence the dilemmas that occur when people are required by a legitimate superior to do things that are morally objectionable to them, as opposed to inconvenient or merely stupid. But it is the right that legitimacy gives those in authority to require obedience in principle, regardless of the content of any particular law or instruction, that makes it so important to the coordination of people's behaviour in all spheres of social life.

The legitimacy or rightfulness of power, then, provides an explanation for obedience through the obligation it imposes on people to obey, and through the *grounds or reasons* it gives for their obedience. I emphasise 'grounds or reasons', because there are numerous psychological studies of obedience which explain it in terms of acquired attitudes and characteristics, such as the internalisation of a respect for authority, which is confirmed by continuous symbolic reinforcement (e.g. Merelman, 1966; Milgram, 1974). The problem with such explanations, which reduce obedience to the sum of attitudes and characteristics developed and internalised over time, is that they fail to explain why people stop obeying, whenever they do so; or else they have recourse to considerations of the psychological 'stress' or 'dissonance' to which people are subjected. Yet people only disobey because they have sufficient and compelling reasons for disobedience in particular contexts; and such reasons will turn out to be precisely the counterpart to the reasons they have for *not* stepping out of line in normal times or situations. Psychological explanations for obedience only carry plausibility when they are in fact disguised accounts of people's reasons; or when we are driven to appeal to non-rational factors because rational ones will not suffice on their own.

However, normative grounds or reasons are not the only reasons people have for obedience. As I shall set out more fully

in the next chapter, power relations are almost always constituted by a framework of incentives and sanctions, implicit if not always explicit, which align the behaviour of the subordinate with the wishes of the powerful. They do so by giving people good reasons of a different kind, those of self-interest or prudence, for not stepping out of line. Obedience is therefore to be explained by a complex of reasons, moral as well as prudential; normative as well as self-interested, that legitimate power provides for those who are subject to it. This complexity may make it difficult to determine the precise balance of reasons in any one situation; but it is important to distinguish them analytically, since each makes a very different kind of contribution to obedience.

The fact that power relations typically involve a framework of incentives and sanctions gives plausibility to a 'realist' or 'organisational' view of power, which holds that obedience is *only* a matter of the resources available to the powerful to ensure compliance with their wishes, and that legitimacy is irrelevant: an issue to be debated by moral philosophers, perhaps, but of no importance to an explanatory account of obedience, and therefore of no interest to the social scientist (Skocpol, 1979; Mann, 1986). This sceptical view is also to be found in the currently fashionable 'rational choice' approach, whose explanatory force depends upon the assumption that social action is to be explained by the agents' calculations of their own self-interest (e.g. Taylor, 1988). What such an account leaves out is obvious to all but the most hardened exponents of the theory: that people are also moral agents, who recognise the validity of rules, have some notion of a common interest, and acknowledge the binding force of promises they have made – all elements involved in legitimate power. To explain all action conforming to rules as the product of a self-interested calculation of the consequences of breaching them, is to elevate the attributes of the criminal into the standard for the whole of humankind, and to make a prison regime into the paradigm case of power. People relate to the powerful as moral agents as well as self-interested actors; they are cooperative and obedient on grounds of legitimacy as well as for reasons of prudence and advantage. It is the task of a theory of legitimacy to identify as clearly as possible what its distinctive place in this complex is.

One way of doing this is to see what happens to a power relationship when legitimacy is eroded or absent. In such a case, power does not necessarily collapse, or obedience cease, since it can continue to be kept in place by incentives and sanctions. However, coercion has to be much more extensive and omnipresent, and that is costly to maintain. Moreover, the system of power now has only one line of defence, that of force; and it can therefore collapse very rapidly if coercion is insufficient or people believe that those in power have lost the will to use it. Once Gorbachev made clear that the USSR would no longer intervene militarily in Eastern Europe, the writing was on the wall for the communist regimes there, since they were only kept in place by the ultimate threat of Soviet invasion. Only the timing and manner of their demise was unpredictable. To admit the role of force in this situation is not to acknowledge the validity of the 'realist' theory of power. What has to be explained is the *prior* loss of legitimacy of communist rule in Eastern Europe, which made it so reliant on coercion, and therefore so vulnerable once sufficient coercion could no longer be guaranteed.

The collapse of authority where legitimacy is eroded, and coercive force is insufficient to maintain power on its own, provides only the most dramatic evidence for the significance of legitimacy to the obedience of subordinates. Less dramatic, but equally important, is the effect a lack of legitimacy has on the *degree* of cooperation, and the *quality* of performance, that can be secured from them, and therefore on the ability of the powerful to achieve goals other than simply the maintenance of their position. Where the powerful have to concentrate most of their efforts on maintaining order, they are less able to achieve other goals; their power is to that extent less effective. The classroom teacher provides a typical example. If pupils do not share a belief in the value of education, on which the justification for the teacher's power is based, or have no respect for the individual teacher, he or she will have to devote correspondingly greater energies to maintaining order than to teaching. To that extent the purposes for which power is held will not be achieved, and this may lead in turn to a further erosion of legitimacy.

The kind of vicious circle in which the powerful can become trapped when their legitimacy is eroded is well illustrated from the attempts at economic reform under communist rule in Eastern Europe. These repeatedly failed, in part at least because

governments had insufficient legitimacy to demand the short term sacrifices, or risk instituting the price rises, necessary to the development of a more market-oriented system (Lewis, 1982, pp.137-8; MacFarlane, 1984, pp.177 ff.). And the failure of economic reform in turn further eroded the system's legitimacy. The point was well made by President Jaruzelski in an interview in May 1990:

'The party could not mobilise Polish forces into constructive channels ... We tried economic reforms time and time again. But they always met with public resistance and explosions. It is very different now. Now with a government that enjoys public confidence, it is possible to demand sacrifices.' (*The Guardian*, 7 May 1990)

Without the legitimacy to demand sacrifices, the ruling party's power over society became a largely negative one: able to control the population in the sense of preventing them doing what they wanted, but not in the sense of securing the cooperation necessary to the achievement of the government's policies.

These examples of the loss of moral authority, from the classroom to the state, indicate that legitimacy is significant not only for the maintenance of order, but also for the degree of cooperation and quality of performance that the powerful can secure from the subordinate; it is important not only for whether they remain 'in power', but for what their power can be used to achieve. Passive non-cooperation, work to rule, feigned incompetence, 'looting', and so on: these attributes of the Good Soldier Schweik and the 'worker in a workers' state' are typical of subordinates where legitimacy has become eroded, and will to that extent reduce the capacity of those in power to achieve their goals (Hasek, 1973; Haraszti, 1977). The effectiveness of the powerful, in other words, is not just a matter of resources and organisation, as the 'realists' would contend, but also of their legitimacy. The realists are at this point simply not realistic enough; they do not take people seriously as moral agents, or recognise that what the powerful can get others to do depends upon normative considerations as well as upon the resources and organisational capacities at their command.

Wherever the goals of the powerful are dependent upon the degree of cooperation and the quality of performance on the part

of subordinates, therefore, to that extent is legitimacy important for what they can achieve as well as for the maintenance of their power. It follows that legitimacy is more crucial to some kinds of power relationship than to others. It is worth exploring in a preliminary way what these might be. We could distinguish two different kinds of situation where the legitimacy of a power relationship is unnecessary to the goals of the powerful.

The first is a labour regime where continuous work is required from subordinates, but the quality of their performance is unimportant, and they can be treated as dispensable because there is a ready supply of replacements available. Such was the position in most historical examples of slavery, where the supply of slaves was repeatedly replenished through conquest and trade. A close parallel was early industrial capitalism, where the work required little skill from the worker, and an unlimited supply of new recruits was available from the labour market to expand production or replace those incapacitated by illness, accident or death. Both these examples of coercive labour regimes lacked legitimacy from the outset, though the source of their coercion differed (physical force, economic duress). In the case of capitalism, the increasing need to secure quality of performance, on the one side, and the pressure of self-organisation by the workers, on the other, necessitated the development over time of a more legitimate relationship, based upon the employers' recognition of collective bargaining rights and the negotiation of collective agreements over the terms and conditions of work (Fox, 1985, ch.4).

In the examples of slavery and early industrial capitalism the absence of legitimacy in the relationship was irrelevant to the performance of subordinates. At this point, however, we need to observe an important distinction. The fact that the relationship depended on coercion did not mean that the powerful did not have a legal basis for their power, or that they did not seek to justify it to themselves. Indeed, both slavery and early capitalism witnessed the most elaborate justifications, derived, in the one case, from Aristotelian notions of a slave 'nature' (Aristotle, 1962, pp.32-4) which was elaborated by later racial theories, and, in the other, from the doctrines of classical political economy. Such 'legitimations', however, were addressed to the

conscience of the powerful, not at all to their subordinates. To address the latter was not only practically difficult, given that they often shared no common language. It was also logically impossible, since the justification for treating slaves and early industrial workers in the way they were treated was that they belonged to a category of objects, and were therefore by definition incapable of being addressed 'as persons'. Slaves were chattels, wholly owned by the slaveowner (Aristotle, 1954, p.212). Industrial workers were 'hands', whose labour power was owned as a commodity, and, like any other commodity, obeyed the laws of supply and demand in the marketplace; if it was overproduced, the numbers would simply be cut by the necessary forces of want, disease and starvation (Smith, 1976, pp.89-90; J.S. Mill, 1909, pp.343-60). In other words, we must distinguish between the 'legitimations' that the powerful develop to reconcile their consciences to the treatment (and maltreatment) of their subordinates, and a legitimate *relationship*, justified in terms of shared beliefs, regulated according to understood conventions and confirmed through the expression of consent.

If the characteristic of coercive labour regimes was that they did not require legitimacy for the level of performance needed in the context, we could contrast them with other labour regimes where quality of performance is crucial. An example from the other end of the spectrum is that of gender relations in most historical periods, where women's domestic work has demanded qualities of skill, dedication and independent initiative that could only be obtained from subordinates within a legitimate relationship. Here the beliefs that provide the justification for the hierarchical division of labour and the definition of a common interest have been shared between men and women, and the legitimacy of the individual relationship has been confirmed by express consent. In the case of gender relations the distinction between the legitimacy of the respective roles and the motivation necessary to perform them is a fine one, and the account of legitimacy will need supplementing with reference to the sociopsychical processes whereby attitudes appropriate to given roles become so deeply internalised that they appear as 'natural' (see below, pp.78-9). Important to note here, however, is simply the point that the quality of performance needed from the subordinate

party in a relationship, and the degree of legitimacy the relationship requires, are closely connected.

One kind of situation, then, where the legitimacy of a power relationship does not matter is where the quality of work performed by subordinates is unimportant. A second is where the relationship between dominant and subordinate is so distant, or indirect, that little is required by the one of the other. In many pre-modern states it made little difference what the beliefs of the vast majority of the population were, and their consent to the state was irrelevant, since their obligations were to purely local chiefs or superiors; it was the relationship between the central state and local power-brokers that was all-important. The contemporary state, in contrast, requires of its whole adult population a general obligation to pay taxes and be available for military service if needed; and there is a variety of situations in which the cooperation of different sections of the population is essential to the realisation of government policy. The legitimacy of the relationship becomes even more critical where, as in a command economy, the state is also the main employer of labour, and economic performance itself is directly dependent upon the state's legitimacy. One of the chief weaknesses of the communist system has been that the state's requirement for legitimacy has been correspondingly greater than that of the capitalist state, but at the same time it has been less able to sustain it than states in at least the advanced capitalist societies, for reasons that will be explored later in the book. Here it will be sufficient to emphasise the qualitative difference between the *erosion* of legitimacy where it matters, as in a communist regime, and the *absence* of legitimacy where it doesn't, as in the slave systems discussed above. One consequent difference is the repeated attempt to reestablish a basis of legitimacy in the former; and the danger of regime collapse, as opposed to merely revolt or rebellion, in the event of failure to do so.

In considering the different levels of performance that are required from those in different subordinate positions, an obvious distinction can be drawn between those who staff the administrative and coercive apparatuses of the state, and the population as a whole. In view of the quality of performance and degree of commitment required from the former if the state organisation is to function effectively, considerable pains will

be taken to reinforce their support for the norms of the regime, and to bind them to it with special contractual commitments and oaths of allegiance. However, it is mistaken to conclude from this, as some writers have done, that the legitimacy of government is therefore chiefly of consequence for the members of the state apparatus, or the political élite, and has little relevance for the population as a whole (Therborn, 1980, p.109; Bialer, 1980, pp.194-5). In the modern period, at least, it has been repeatedly shown that the state apparatus cannot be immunised from an erosion of regime legitimacy that has affected the attitudes and behaviour of the rest of the population; and that the refusal of the masses to do as they are told will provoke a corresponding crisis of obedience among the armed forces that are ordered to discipline or crush them. The collapse of the Shah's regime in Iran in 1979 is only the most spectacular recent example of the erosion of an army's loyalty in the face of repeated mass protest. It provides convincing evidence that the legitimacy of a regime is as crucial to its effectiveness as the competence of its administrators or the firepower of its armies, and that the strength of an organised power structure is dependent in the last analysis upon the readiness of subordinates to obey orders under pressure.

Enhanced order, stability, effectiveness – these are the typical advantages that accrue to a legitimate system of power as a result of the obligations upon subordinates that derive from its legitimacy. 'Order' depends upon people obeying rather than disobeying. 'Stability' is not mere longevity, but a system's ability to withstand shock and failure because a solid level of support from its subordinates can be guaranteed. 'Effectiveness' includes the ability of the powerful to achieve their goals because of the quality of performance they can secure from those subordinate to them. Legitimacy is not the only factor contributing to the order, stability and effectiveness of a system of power; organisational capacities and resources are obviously crucial as well. Moreover, as we have seen, it is possible in certain situations for the goals of the powerful to be realised on the basis of coercion alone. Yet legitimacy makes its distinctive contribution to achieving these other qualities through the effects it has on the attitudes and behaviour of the subordinate as moral agents, not just as self-interested actors.



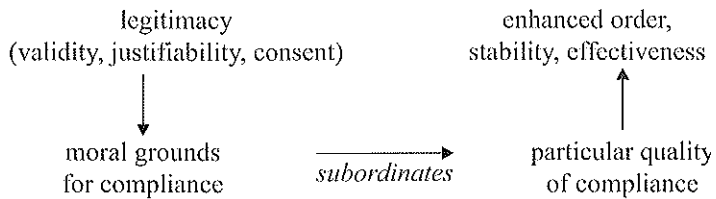


Figure 1.1 Characteristics of a power system or relationship

I have spent a good deal of time identifying the effects of legitimacy, because there are so many different elements involved in a power relationship, and the interaction between them is enormously complex and easy to misread. Many political scientists confuse legitimacy with regime-stability, or define it as simply a by-product of effective system-functioning (e.g. Luhmann, 1969). This conceptual conflation, which equates legitimacy with the consequences it produces, can only be avoided if we are able to give a clear account, not only of what legitimacy is, but of how it produces the consequences it does through the obligations that subordinates derive from it. The accompanying diagram (Figure 1.1) sets out in summary form the different steps I have distinguished in my account of the consequences of legitimacy, first for the behaviour of subordinates, and then in turn for other characteristics of the system of power.

So far I have discussed the consequences of legitimacy for the behaviour of the subordinate within a power relationship. I now turn more briefly to consider its consequences for the powerful. If legitimacy, as I have argued, enhances the order, stability and effectiveness of a system of power, then we should expect that the powerful will seek to secure and maintain the legitimacy of their power, in view of its advantages to them. Here again, however, we must be careful to avoid drawing the wrong conclusions from a mistaken definition of legitimacy. If we reduce it to people's 'belief in legitimacy', then we are likely to conclude that the way in which the powerful maintain their legitimacy is primarily by means of ideological work, and through the influence they have over the beliefs and ideas of the subordinate. 'Every power seeks to establish and cultivate a belief in its legitimacy', wrote Weber; and many have drawn the conclusion from this

statement that it is precisely by cultivating beliefs that legitimacy is maintained (Weber, 1956, p.157; 1968, p.213).

I do not wish to discount altogether the role of ideological work, particularly in reinforcing the basic norms that underpin a given system of power, though I shall want to argue later that the processes involved are complex ones, and have been oversimplified in much of the relevant literature. What I would emphasise at this point, however, is that we need to look quite elsewhere for the effect of legitimacy on the behaviour of the powerful. If legitimate power is, as I have argued, power that is valid according to rules, and where the rules themselves are justifiable by and in conformity with underlying norms and beliefs, then the main way in which the powerful will maintain their legitimacy is by respecting the intrinsic limits set to their power by the rules and the underlying principles on which they are grounded. Legitimate power, that is to say, is limited power; and one of the ways in which it loses legitimacy is when the powerful fail to observe its inherent limits.

What are these limits? I would draw attention to two different kinds. One kind of limit is set by the rules which determine what the powers of the powerful are, and what they can rightly expect those subordinate to them to do – which specify, in other words, the respective duties and obligations of those involved in a power relationship. These rules may be largely conventional, or they may be legally defined. A feature of the modern world is the increasingly precise legal specification of the respective powers, or 'sphere of competence', of each powerholder. Even today, however, there is still considerable room left for 'custom and practice', for conventional understandings built up over time through processes of struggle and compromise, which govern the expectations of the powerful and the subordinate about what is, and is not, required of them; what can, and cannot, legitimately be demanded.

For the powerful to breach these rules in a substantial way, say by imposing some new or additional obligation on subordinates without warning or consultation, is either to invite action for legal redress, or, where the law is silent, to provoke informal protests which may develop into a more widespread crisis of legitimacy for the system of power. Unless they are arrogant or stupid, powerholders will only take such action when it is essential to some

important purpose, or if they are driven to it by a serious predicament of their own. The fact that mostly they do not do so, and that they mostly respect the rules and conventions governing their relations with those subordinate to them, makes it easy to overlook an essential feature of legitimacy: that it sets limits to the behaviour of the powerful as well as imposing obligations on the subordinate. Because we more readily notice what the powerful do than what they refrain from doing, this essential feature of legitimacy tends to go unremarked.

The other kind of constraint which their need to maintain legitimacy imposes on the powerful is a more fundamental one: to respect the basic principles that underpin the rules or system of power, and to protect them from challenge. Rulers who derive their legitimacy from a divine source must respect religious traditions and defer to religious authorities; they will regard any threat to religion or religious belief as among the most serious they face. Those who derive their authority from the people will ignore at their peril any insistent and widespread popular current of opinion; to be seen to favour foreign interests at the expense of national ones will do more damage to their standing than almost anything else. Those who claim a monopoly of representation of the working class by virtue of a privileged knowledge of their interests cannot afford to allow independent sources of working-class opinion to find expression, or alternative institutions of representation to develop, which might challenge their monopoly. The legitimating ideas and justificatory principles that underpin the given institutions of power define which challenges the ruler has to take most seriously, because they strike at the basis of the system of rule itself (Rothschild, 1977, pp.490-1).

To understand the limits inherent in a system of legitimate power, and the conditions necessary to its maintenance, is to identify the distinctive character of the rules governing it, and the justificatory principles which underpin them. Here we find that the study of legitimacy is not only a study of the difference that it makes to the behaviour of the people involved, by its presence or absence, or according to its degree. It is also a study of the consequences that the particular *form* of legitimacy – its source or principle of justification, its criteria of consent, and so on – has for the character of power relations. Whether access to power is determined by birth or merit, by ascription or achievement,

whether the ultimate source of rules is located in tradition or the 'people'; whether consent is defined in individualistic or more collective terms: all these have important implications for the character, the organisation and the institutions of power.

A basic assumption I shall make is that rules and institutions of power embody legitimating ideas or justificatory principles within them, whether this happens because they are consciously created at a particular moment, or develop through a lengthy process of historical evolution. This assumption does not imply an 'idealist' theory about the logical or historical priority of ideas. As I shall argue in the succeeding chapters, analysing power involves understanding the interaction between three different elements: the material and other means of power; the rules of its social organisation; its justificatory principles or ideas. Rules of power are shaped by both material means and legitimating principles or purposes, albeit in a historically variable manner; any opposition therefore between an 'idealist' and a 'materialist' theory of power is in my view misconceived.

If it is correct that systems of power embody justificatory principles or assumptions within them, then it is possible to develop typologies of power systems according to the main differences of principle they embody. One axis of differentiation concerns the distinctive social purposes they serve, which will differ for gender, class and political power respectively. A second line of differentiation concerns the different principles governing access to property or political power, and the form of consent appropriate to each, which will differ between different historical periods and different types of economic and political system. Besides an analysis of legitimacy in general, therefore, and of its consequences for people's behaviour, this book will also concern itself with a comparative study of the justificatory principles and conventions of consent embodied in different rules or systems of power.

### **Conclusion: a social or political concept?**

In this chapter I have argued for a social-scientific conception of legitimacy that differs, on the one side, from the normative philosopher's search for independent criteria of legitimacy or

ideal conditions for consent; and, on the other, from a mistaken Weberian conception which reduces the legitimacy of power to people's belief in its legitimacy. It differs from the latter in that it involves a judgement about a given system of power, not a report on what people believe about it; it differs from the former in that the judgement is a judgement of legitimacy-in-context, assessed against the relevant norms, principles and criteria for consent pertaining in the given society. In identifying what is relevant, and therefore what to look for in the particular society, the social scientist is guided by the general criteria I have elucidated, which together provide sufficient grounds for obedience.

Legitimacy is important, I have argued, because of its consequences for behaviour, and for the character of power relations. Against those who hold that the obedience of the subordinate can be sufficiently procured by incentives and sanctions, I maintain that the normative commitments that derive from legitimacy ensure a distinctive level and quality of compliance and cooperation, though this level is more essential in some contexts than others. Against those who equate legitimacy with stability or efficiency, I argue that legitimacy should not be confused with the effects it produces on a system of power through the enhanced obedience of its subordinates. Finally I have shown that legitimate power sets limits to the powerful through the normative expectations and principles it embodies, and that an analysis of these norms and principles is essential to understanding the distinctive character and institutions of a given system of power.

Throughout I have been critical of realist or sceptical theories of power, which I have shown to be based on either a faulty analysis of power, or an impoverished conception of human nature. If power is one person's ability to achieve their purposes through others, then it cannot be a matter of capacities and resources alone, but also depends on the degree of the others' willingness to cooperate. And that willingness cannot be sufficiently created by incentives and sanctions on their own; it depends on the normative status of the power holder, and on normative considerations that engage us as moral agents. This normative status derives from the character of a legitimate power relationship as legally valid, justifiable according to shared norms and beliefs, and confirmed through actions expressing consent. Above all, therefore, I have been critical of accounts which

reduce legitimacy to the sum of 'legitimations' that the powerful can get the subordinate to accept. Legitimacy is not the icing on the cake of power, which is applied after baking is complete, and leaves the cake itself essentially unchanged. It is more like the yeast that permeates the dough, and makes the bread what it is.

A final question remains to be answered in this introductory chapter. Is legitimacy a specifically political concept, which should properly only be applied to political power? So some theorists have argued (e.g. Habermas, 1979, p.179), while others have sought to narrow its application still further, to the sphere of post-medieval politics, on the grounds that only in the modern state have the issue of political obedience and the contestability of legitimacy become persistent features of public life (e.g. Hennis, 1976, pp.26-7). I would argue against both attempts at narrowing the applicability of the concept. Political philosophy may only flourish where legitimacy is contested, and social science may only appreciate its importance from the experience of situations where it is absent or under challenge. Disruptions of order provide a necessary stimulus to both kinds of intellectual activity. It does not follow, however, that legitimacy is only significant *where* it is most noticeable and most contested. Indeed it is precisely disorder and instability that demonstrate its necessary contribution to order in more settled, not to say stagnant, times.

If the concept of legitimacy cannot be restricted to the post-medieval world, neither can it be limited to the sphere of politics as such. It should be evident from everything that I have said in this chapter that it is power itself that morally stands in need of legitimation, though not every form of power requires it in practice, and by no means all achieve it. All societies find it necessary to regulate the access to and exercise of power; and wherever power is organised and distributed in accordance with social rules – in the spheres of production and reproduction, in the family and the economy, as well as the polity – these rules stand in need of legitimation. Legitimacy is an important aspect of power in all these spheres. How we define what is 'political' is a matter of convenience and focus of interest. In so far as the power of gender and property are the subject of legitimation, involving reference to law and convention, the public justification

of rules and the organisation of consent, these forms of power are eminently 'political' in the broadest sense of the word.

It is undeniable, however, that legitimacy also has a special significance for the more narrowly political sphere, the sphere of the polity, for a number of reasons. The political domain is responsible for the legal formulation, adjudication and enforcement of society's rules, and thereby legitimates all other social powers. At the same time there is no law-making authority beyond itself to legitimate its own rules of power. Moreover, the form of power which is distinctive to it – organised physical coercion – is one that both supremely stands in need of legitimation, yet is also uniquely able to breach all legitimacy. The legitimation of the state's power is thus both specially urgent and fateful in its consequences.

The fact that legitimacy is significant for power relations in general, while also having a particular urgency for the state, has determined a two-part structure to this book. The first part will consider legitimacy across the three dimensions of gender, class and political power together, while also identifying significant differences between them. Chapter 2 will analyse what exactly power is, and the respects in which it requires legitimation. Chapter 3 will explore further the basic normative structure of legitimacy, as already outlined. Chapter 4 will draw out the implications of the fact that legitimacy in historical societies is typically constructed and reproduced within established power relations, rather than outside or beyond them. The second part of the book will examine legitimacy in the contemporary state; it will consider the internal dynamics and crisis tendencies of different political systems, explore the different modes of non-legitimate power, and explain why the contemporary state has such difficulty in attaining the legitimacy it needs.

Underlying the substance of my analysis will be a deeper methodological purpose: to arrive at a valid understanding of the relation between social science and normative philosophy. Although I have argued that the point of each activity is different and should not be confused, by Chapter 4 it will have become clear that an adequate explanatory account of legitimacy can only be obtained by adopting the independent standpoint of the normative philosopher. And by the end of the book the necessity of unifying the two activities in a common enterprise will have

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been reached, as the culminating point of the enquiry. What I shall show is that a complete understanding of legitimacy can only be attained through an adequate specification of the relation in which social science and normative philosophy stand to each other. For that reason the subject of legitimacy can claim to constitute, not merely an important topic, but the central issue in social and political theory.



## 9 Legitimacy within the State

Since this book was first published, the academic study of legitimacy has developed enormously. In political science there has been a big growth in research on the comparative legitimacy of states, both in particular regions and across the world, and in the development of empirical indicators for assessing this. Within states research on legitimacy has burgeoned in the field of criminal justice, and the study of compliance with the authority of the police, courts and prisons. Beyond the state a huge interest has developed in the basis of legitimacy of international institutions, whether inter-governmental organisations, NGOs, financial institutions or regional bodies such as the European Union. All of these developments are reviewed and assessed in this new part of the book.

At the same time interest in legitimacy as a subject has extended not only into new fields, but into some basic questions of method in its study which lie at the heart of this book. How should legitimacy be analysed? How can such an elusive concept be given a sound empirical basis? What difference does its presence make to compliance with authority? Who are the key audiences for legitimacy claims? What role does consent play in legitimacy? These questions have particularly concerned researchers in comparative politics and criminal justice, and serve to frame the discussion of these fields in Chapter 9.

Research on legitimacy at the international level raises a new set of questions. International organisations, whether inter-governmental institutions or NGOs, pose questions about the nature of authority and role of legitimacy where there exists little power of sanction. The European Union raises questions about what happens to an authority system whose legitimacy is continually contested.

And the self-induced collapse of the international banking system in 2007–8 reveals what can happen when a profound crisis of legitimacy is not followed by proportionate acts of retribution and delegitimation, and becomes displaced onto democratic governments. All these international institutions react in different ways on the legitimacy of nation-states, and their study raises novel questions about the nature of legitimacy itself. This will be the subject of Chapter 10.

The discussion of these different fields of study will show the continuing usefulness of the threefold discursive framework of legitimacy developed in this book – comprising legality, normative justifiability and acts of endorsement – as a tool of analysis for all kinds of authority system. At the same time this framework has been enriched by the new areas of study, for example by showing the importance of expected standards of behaviour on the part of those exercising authority, and distinguishing between the different audiences for legitimacy claims. They have also revealed points where the presentation of aspects of the framework needs improvement or revision, most obviously in the use of the ambiguous term ‘consent’. These will be addressed at the appropriate points in the text. So first, then, research on the comparative legitimacy of states and their enforcement agencies, and some key questions their study raises.

### **Who are the key audiences for legitimacy claims? Can legitimacy as such be studied?**

These two questions are linked together in a book by Rodney Barker, *Legitimizing Identities* (2001), which provides a useful starting point for considering them. In this book he argues that the chief audience for legitimacy claims, or ‘legitimations’ as he calls them, are rulers themselves and their retinues, rather than any wider public; and therefore that research should concentrate on analysing the language, the rituals, the displays that rulers engage in to construct and reinforce their image of power and superiority, which his book indeed richly exemplifies.

Barker’s arguments for this emphasis are twofold. First is an argument about priority: it is rulers above all who need to be convinced of their own right to rule if they are to have the self-confidence to govern effectively, and central to this process of

self-justification is 'the cultivation of an identity distinguishing them from that of ordinary men and women' (p.3). He terms this process 'endogenous legitimation', i.e. self-directed, rather than 'exogenous', directed outwards towards a wider public. When regimes falter or break down, it is because rulers have ceased to believe in their own legitimations, and have lost the confidence to govern.

Barker's second reason for prioritising the self-belief of rulers is methodological, about what can be empirically studied. Common to governments everywhere, he argues, is the activity of claiming legitimacy, of constructing 'legitimations', an activity which can be readily observed and analysed. A state of legitimacy, however, of being legitimate, cannot be empirically ascertained one way or another. 'Legitimation is an activity which can be observed,' he writes. 'On the other hand "legitimacy", the thing claimed, is from the point of view of the observer not a phenomenon that can be observed.' He goes on to compare it to talk about God. 'Legitimacy does not exist as a feasible subject of empirical or historical enquiry, in the same sense that God does not exist as a possible subject for social scientific study.' When the term 'legitimacy' is used it serves as a metaphor for describing people's activity of making claims or legitimations, not an 'independent phenomenon'. It would therefore be best, he concludes, to have a complete moratorium on the use of the term 'legitimacy' in social science. (pp.24-6).

These arguments constitute a challenge not only to the subject of this book, but to much of the research on legitimacy that has been carried out since it was first published. As regards Barker's argument about priority, it may be true that investigating the claims to legitimacy either made explicitly by power holders or implicit in an authority system forms the *starting point* of any enquiry. We can agree with Max Weber that 'the continued exercise of every domination always has the strongest need of *self-justification* through appealing to the principles of its legitimation' (1978, p.954). Yet it matters crucially for the effectiveness of an authority whether, and how far, these legitimations are acknowledged or accepted by those subject to it. And investigating this must form a further stage of enquiry. Ascribing legitimacy to an authority is no mere metaphor or God-speak. It is to say that its legitimacy claims or 'legitimations' are accepted by those subject to it, and that there are

common beliefs shared by power holders and subjects on the basis of which their authority is acknowledged as rightful. Moreover it is to claim that this acknowledgement makes a difference to the quality of obedience and the effectiveness of the authority.

To be sure, as I argue in the book, there are examples of authority systems where the relation between power holders and subjects is either so remote or so effectively repressive that it matters little what those subject to it may think (pp.30–3). Yet these are the exceptions rather than the norm. And especially since the incursion of the masses onto the political stage in the revolutionary era of the late eighteenth century, it can no longer be regarded as irrelevant what those subject to authority think, or how credible the legitimations of the powerful are to the wider society. The key question for the study of legitimacy, therefore, is how to ascertain empirically what the beliefs of those subject to authority may be, and how consistent they are with the legitimacy claims of the powerful or the principles underpinning a given system of authority. Much of the research on legitimacy from the 1990s onwards has been devoted to identifying what method of investigation and what kinds of data are relevant to answering this question.

The following sections review two very different contexts and methodologies for analysing the attitudes of those subject to authority and their relevance to its legitimacy, one at a micro-level and the other at a macro-level. The micro-level is exemplified by a large body of research in the field of criminal justice devoted to studying the legitimacy of the police, courts and prison regimes through panel surveys and ethnographic studies of those subject to their authority. The macro-level is represented by two major cross-country studies of political legitimacy using large comparative data sets of public attitudes, beliefs and behaviour. Together these show that it is possible not only to operationalise the concept of legitimacy in a meaningful way, but also to demonstrate the congruence, or lack of it, between the legitimacy conceptions of power holders and of those subject to their authority.

#### **Micro-level: legitimacy in criminal justice studies**

A key figure in the study of legitimacy in the criminal justice field is Tom Tyler, whose 1991 book *Why People Obey the Law* proved a path-breaking work, whose findings he has refined and

confirmed in numerous subsequent studies (e.g. Tyler, 2003; Sunshine and Tyler, 2003). His aim in this work was to subject the concept of legitimacy to rigorous empirical testing so as to free it from the charge of being a 'magical' idea, 'to be invoked when our power of explanation otherwise fails us' (p.27). His method was to interview a panel of randomly selected citizens of Chicago to ascertain their experiences, attitudes and behaviour in relation to law enforcement agencies. His conclusion was, first, that people were in the main law-abiding for normative rather than instrumental reasons, because they believed the authorities had the right to interpret and enforce the law. But, secondly, the belief in the rightfulness of the authorities was crucially dependent on their being perceived as treating people fairly and with respect, whether in court proceedings or in police encounters with the public. This treatment he termed 'procedural justice', which he concluded was the key element forming the public's perceptions of the legitimacy of law enforcement agencies, and its consequent level of compliance and cooperation with them. 'The roots of legitimacy lie in people's assessment of the fairness of the decision-making procedures used by authorities and institutions,' he writes. 'To the degree that people regard the police and courts as legitimate, they are more willing to accept the directives and decisions of the police and courts, and the likelihood of defiance, hostility and resistance is diminished' (2003, p.286).

With regard to order in prisons, the centrality of fair treatment to perceptions of the legitimacy of prison regimes has also been empirically demonstrated. In their comparative study of two English prisons, Richard Sparks and Tony Bottoms came to the conclusion that 'on a day-to-day level most prisoners accept that someone has to have power over them, on behalf of the State. What then becomes crucial is *the way* that that power is exercised...Their perceptions of the fairness of the staff in matters such as manner, even-handedness, and the quality of explanations given in case of problems are perhaps the most crucial factors of all in determining whether prisoners see the prison operating in a legitimate manner' (1996, 2008, p.99).

So if it is the quality of people's encounters with front line officials that shapes their attitudes to an organisation, this may well explain any divergence between the 'legitimations' adopted by power holders and the legitimacy conceptions of those subject

to their authority. Here the criminal justice literature shows how different audiences may be concerned with different dimensions of legitimacy, and assign differential importance to them. Members of the police, for example, may believe that, provided they act according to the law and are effective in their acknowledged purpose of crime prevention and detection, this is sufficient to ensure their legitimacy. Those subject to their interventions, however, may be more concerned with being treated fairly and with respect than with overall police effectiveness or the precise scope of their legal authorisation. David Smith argues for the UK that police and government concern with measurable performance targets may do little to enhance public trust compared with establishing a code of professional ethics and standards of good conduct (2007, pp.300–2). And in an innovative study of policing in Ghana, which gives equal weight to the analysis of police and public perceptions of police legitimacy, Justice Tankebe concludes that ‘the police cannot seek to bolster their standing among the public solely by demonstrating their effectiveness in maintaining law and order in people’s neighbourhoods if they consistently disregard citizens’ basic rights to humane and dignified treatment’ (2007, p.45).

How might this gap in perceptions of legitimacy be bridged? One way might be through improved presentation of their policies and achievements on the part of power holders, what I call in the book ‘winning the public relations campaign’. However, this approach will bring only limited returns if it is the actual behaviour of authorities and their agents that is at issue. The alternative is to seek to modify the conceptions of power holders rather than their subjects through a process of dialogue, either directly or through representatives, or by the intervention of those involved in police or prison officer training. This ‘dialogic’ approach to legitimacy, as it has been termed, serves to highlight sites or moments of intervention which may bring about changes in power holders’ perceptions of their own legitimacy, most dramatically through enquiries into major breakdowns of public or prison order. The legitimacy of authorities, in sum, is not something given or unalterable, but can be enhanced where they show themselves prepared to listen and respond to experiences and challenges from below (Bottoms and Tankebe, 2012).

What the research from the criminal justice field demonstrates is that it is perfectly possible to operationalise the concept of

legitimacy by investigating how far the legitimations of power holders are shared or endorsed by those subject to them. This research confirms the contention of this book that legitimacy involves a *relationship* between authorities and those subject to them, and is not just about the legitimations of the powerful (pp.25–34); and it does so with an empirically grounded method of investigation. It also expands the concept of what I call in the Introduction ‘due performance’ beyond the effective realisation of an authority system’s purposes or goals, to include conformity to socially expected standards in the exercise of power, especially on the part of its most immediate agents.

This expansion has implications for political legitimacy more generally. After all, courts, police and prisons comprise a central part of the state. And conclusions about the importance of fair treatment and respect can be generalised to other agencies for which the state is responsible. People’s attitudes to the state itself can be influenced by the personal treatment they receive at the hands of the most junior official or immediate service provider.

#### **Macro-level: comparing political legitimacy across countries**

A second body of research which shows how the concept of legitimacy can be empirically operationalised lies in the development of methods to produce cross-country comparisons of political legitimacy. Two different examples will be reviewed here. The first, by John Booth and Mitchell Seligson (2009), assesses democratic legitimacy in eight Central American countries. The second, by Bruce Gilley (2006, 2009), develops methods for measuring political legitimacy across 72 countries, democratic and non-democratic alike.

Booth and Seligson’s starting point is with a puzzle, namely why democracy survives when there may be high levels of dissatisfaction with regime performance, both economically and politically. Does regime legitimacy not matter then? Should we agree with Przeworski that democratic stability is a function of affluence, and that once democratic countries have attained a certain level of GDP their democratic stability is assured, without reference to the tautological concept of legitimacy? The difficulty with this conclusion is that all the eight countries examined are well below this critical level, yet in most of them democracy is stable. So legitimacy cannot so readily be written off as an explanatory

factor. The problem lies in the failure to analyse it properly, the authors contend.

In order to analyse political legitimacy, Booth and Seligson argue, we have to observe two kinds of distinction. The first is to distinguish clearly between what legitimacy consists in, what causes it, and what its effects are. Political legitimacy consists in public attitudes to the regime and its key features which are broadly supportive, and which can be analysed by survey techniques. But, secondly, we need to distinguish between different features of a regime, attitudes to some of which may be more important than others in leading to the effect of democratic stability. Legitimacy, in short, is multi-dimensional, and not all dimensions may be of equal significance.

Here the authors follow Pippa Norris (1999) in distinguishing five different regime features, positive attitudes to which comprise political legitimacy. These are: the political community (the nation), regime principles (core values of the political system), regime institutions (the actual institutions of the government), regime performance (the functioning of the regime in practice) and political actors (incumbent leaders). To this they add attitudes towards local government, which is often the aspect of government which citizens have most contact with, but which is frequently overlooked in legitimacy studies. For each of these aspects or dimensions they then devise survey questions to elicit the level of support that respondents have for them, questions that were put to over 12,000 people in the eight countries surveyed in 2004 (pp.51-3).

Taking the respondents as a whole, the authors found that they showed much more positive attitudes towards the political community and democratic principles than to the other dimensions. In particular the performance of government, whether at local or national level or of current incumbents, was measured at less than 50% approval over the whole sample (p.60). Moreover, the more educated the respondents, the higher their support for the political community and democratic principles on the one hand, and the more critical they were of government and regime performance on the other. Yet disaffection with performance did not lead to withdrawal from political participation, whether through civic engagement, protest activity or formal participation in voting.



A clear conclusion that can be drawn from these findings is that a citizen body which shares a sense of common nationhood and values the opportunities for political participation that a democratic system guarantees, matters more for the stability and survival of democracy than its evaluations of government or incumbent performance. After all, as I argue in the book, democracy provides the opportunity for peaceful removal of a failed administration, and hope for improvement in performance by its successor, however this is to be measured (pp.169–70). For this reason performance evaluations matter less for long-term democratic stability than a commitment to the basic values of the system, and a readiness to use the opportunities for political participation of all kinds that it provides.

Where Booth and Seligson's findings are less conclusive is in an overall comparison between countries, rather than between the different dimensions of political legitimacy, or between the attitudes of different social groups across the whole sample. However, they show an intuitively plausible connection between the length of a country's experience of democracy and its citizens' commitment to fundamental democratic liberties. And they single out two of the eight countries, Guatemala and Honduras, which show significant numbers reporting dissatisfaction across many of the dimensions of political legitimacy. The fact that Honduras experienced a coup in 2009 provides some support for their method of assessing democratic legitimacy, and corresponding democratic vulnerability.

In the book I have expressed considerable pessimism about the prospects for the survival of democracy in developing countries due to the pattern of interaction between state, economy and society, and its consequences for effective electoral and party competition (pp.171–8). The history of the two decades up to 1991 gave considerable support for this judgement. The two decades since, however, have shown this conclusion to have been premature, as country after country in the South has not only made the transition to democracy, including such giants as South Africa, Nigeria and Indonesia, but has succeeded in consolidation its democratic institutions over a number of electoral cycles. How should we explain this change?

At the expense of grossly oversimplifying the differences of experience between continents and countries, one can point to

three factors common to all new or restored democracies which have served to consolidate democratic institutions in much of the developing world. Two of these are political, one is economic. At the political level there has been a clear determination on the part of populations everywhere not to return to the human rights abuses suffered under authoritarian regimes, and to take full advantage of the restored opportunities for civic and political activism. This determination has been reinforced at the regional and international levels by the acceptance of democracy as a globally valid norm, by practical support for democratic institution building and by the threat of sanctions for countries reverting to dictatorship.

At the economic level the implantation of neo-liberal orthodoxy in governments and political parties, including parties of the left, whatever its ambiguous economic results, has removed any threat felt by property owners from the incursion of the impoverished masses into the political system. Where for much of the twentieth-century democracy served as a political mechanism to modify the inequalities of the free market, by the start of the twenty-first century it had become a vehicle for endorsing, if not reinforcing, them. The partial exception here is Latin America, where left-wing governments have challenged neo-liberal orthodoxy through greater control over national mineral and other resources and policies of redistribution, though the attempted coup against Hugo Chavez in Venezuela in 2002 showed the continuing capacity of such policies to alienate the owners of private property.

A second example of comparative macro-analysis of political legitimacy is provided by Bruce Gilley in his study measuring the relative legitimacy of 72 states containing over 80% of the world's population. In contrast to Booth and Seligson he does not confine himself to democratic regimes or to one geographical region. Nor does he consider popular attitudes to particular governments or individual incumbents. His subject is the state itself, the 'basic institutional and ideological structure of a political community'. He defines state legitimacy as endorsement of the state by citizens at a moral or normative level. 'A state is more legitimate,' he writes, 'the more that it is treated by its citizens as rightfully holding and exercising political power' (2009, p.11). Like the researchers in the field of criminal justice he sees legitimacy as an important public good which has significant consequences for the effectiveness and stability of an authority system.

Starting from this book's three-fold dimensions of legitimacy as legality, normative justifiability and expressed consent, Gilley identifies nine key attitudinal and behavioural indicators which are available from cross-national survey and other data, and which can be aggregated to measure citizens' perceptions of their state's legitimacy. These are, for legality, citizens' confidence in human rights performance and in the police and civil service respectively (World Values Surveys, 1999–2002); for normative justifiability, three surveys of attitudes towards the existing political system and one behavioural indicator of the use of violence in political protests (1996–2000); and for acts of consent, the degree of payment of readily avoidable taxes, and voter turnout in national legislative elections. These are then aggregated into an overall legitimacy score for each state, assessed from the standpoint of its citizens (2009, pp.17–18).

The next step, using regression analysis, is to identify which objective features of a country, social, economic or political, most closely correlate with the legitimacy scores, and can be taken as explanatory variables of them. These turn out to be primarily *political* ones. It is a state's performance in three key respects – good governance, democratic rights and economic development/welfare – that are the chief determinants of citizens' perceptions of its legitimacy. Effective delivery of at least two of these is needed for a high legitimacy score, Gilley concludes, though trade-offs between them and shifts over time are possible.

This conclusion about the primarily political source of a state's legitimacy has a number of important consequences, according to Gilley. One is its implications for practice. A state's level of legitimacy is not something it is fated to endure, but can be improved by policy changes and institutional reform. In particular, poor countries are not necessarily 'trapped in a cycle of under-performance and under-legitimacy from which they cannot escape', as the author's case study of Uganda after 1986 exemplifies. States can enhance their legitimacy either through improving their performance or through shifting it in ways that more closely reflect citizen preferences, and so 'bootstrap their way to virtuous cycles of citizen compliance and state effectiveness' (2009, pp.53–7).

From this stems a second conclusion, that legitimacy is best understood as a dynamic process of interaction or dialogue between states and their citizens, in which performance and legitimacy

respond to each other. In the case of Uganda, Gilley writes, the state 'continually evolved in response to dissent and other forms of negative feedback. Indeed institutional change...can be seen as in constant dialogue with the demands of legitimacy'. And in terms that further echo much of the criminal justice literature, he concludes that states must learn to trust, respect and respond to their citizens' concerns if they wish to achieve legitimacy. One possible problem with this interactive conception is that it becomes more difficult to separate out clearly cause from effect in relation to legitimacy, or what is the dependent from the independent variable. In Gilley's account legitimacy turns out to be both a consequence of government effectiveness and a contributor to it, through the level of citizens' compliance and cooperation that their recognition of the right to rule brings with it.

Among Gilley's findings that will particularly intrigue political scientists is that some authoritarian states may have higher scores than some democratic ones. For the period in question (1996–2000) Morocco, for example, scored marginally higher than both France and Greece, and Egypt and Jordan above both Slovenia and India. In the light of the subsequent Arab Spring, these scores may appear to have been overly generous. However, Gilley protects himself with the observation that 'such states may simply be legitimate for reasons other than their undemocratic nature, and people might still prefer if they were democratic'. We should remain open to the possibility of legitimate alternatives to democracy, he concludes, but 'even then such claims may be overtaken by events' (pp.45–6). A later article provides an updated data set using the same methodology (Gilley, 2012).

Any conclusion about the level of a country's political legitimacy depends on how much weight is given to its respective components. In my discussion of the normative dimension of legitimacy in the book I give more weight than Gilley does to having a rightful source of authority for political office. And I argue that, where public belief in this is weak, it may be compensated for by effective performance for a time, but the political system itself is vulnerable in the event of serious performance failure, whether this be in the expected purposes of government or standards in its exercise, or both. The Arab Spring has served to confirm this analysis, while also showing that the hereditary-based monarchies of Morocco and Jordan have enjoyed sufficiently more support than

the self-appointed rulers using manipulated elections to legitimate their positions, such as Mubarak in Egypt and Ben Ali in Tunisia. Although the monarchies have not to date been immune from the 'demonstration effect' of the popular revolts in neighbouring countries, the demands they have faced have been for reform rather than outright removal from office or regime change.

Particularly intriguing in Gilley's league table of political legitimacy is the high place achieved by China (13/72), a country on which he is himself an expert, and which I assumed in the book would not recover its legitimacy after the Tiananmen Square massacre of 1989. Since then China has avoided the fate of other communist countries analysed here (pp.179-90) by combining the party's political monopoly with a system of managed capitalism which has proved extraordinarily successful in securing rapid economic development and provision of consumer goods. Whether the party's authority is sufficient to withstand an economic downturn, in a context of popular grievances over corruption and intensified inequalities, is an open question. Its source of authority seems to derive from a traditional Confucian model of enlightened paternalism, combined with the technocratic capacity to devise policies for a rapidly changing social and economic environment, while also managing regular leadership renewal without major upheaval (Holbig, 2009). Certainly this has ensured that movements of protest and opposition have not to date achieved widespread public support. However, China remains a unique model of political legitimacy which cannot realistically be exported elsewhere.

The main conclusions to be drawn from this review of attempts to operationalise the concept of legitimacy, whether in the criminal justice field or in political science, can be shortly summarised. The different audiences for legitimacy claims need to be clearly distinguished. While the legitimations of power holders may be important in bolstering their sense of identity and self-confidence in their authority, its degree of *legitimacy* is to be assessed by the extent to which those subject to it acknowledge it as rightful. And this can in principle be empirically ascertained through attitudinal and behavioural indicators which are available in the public domain, although the precise choice, design and weighting of these is always open to disagreement and improvement in practice. Here lies a rich field for on-going research.

### What role does 'consent' play in political legitimacy?

My use of the term 'consent' in the book as the third dimension of legitimacy, referring to actions 'expressive of consent' which serve to confirm an authority's legitimacy, has caused considerable confusion as well as objection. The term is a highly ambiguous one, as long-standing debates within political philosophy over the distinction between 'express' and 'tacit' consent bear witness. So it is important here to clarify the sense in which I use the term, and consider whether it would be clearer to abandon it altogether.

We could usefully distinguish between a subjective or internal and a performative or external type of consent in relation to legitimacy, and especially political legitimacy. The first of these treats consent as a subjective state of agreement with the norms of a regime on the part of those subject to it. This makes 'consent' part of what I refer to as the normative dimension of legitimacy, where there is a congruence between rulers' and subjects' beliefs in what makes authority rightful. This is the sense in which Jean-Marc Coicaud uses the term in his book *Political Legitimacy* (2002), when he argues that consent is crucial to the creation of reciprocal rights and obligations which constitute the foundation of legitimacy. More specifically he says of consent that 'what matters, for its existence and operation to be made explicit, is that there should be a relationship of reciprocity resting upon a *mutual recognition of rights and duties*, both on the part of the governors and on the part of the governed' (p.75).

This sense of 'consent' as a subjective state of agreement with the norms of the political system is also used by Anderson et al. in their book *Losers' Consent: Elections and Democratic Legitimacy* (2005). The book is an exploration of how far losers in an electoral contest continue to support the system under which they have lost, and under what circumstances they might be less inclined to do so. The authors use the term 'consent' for the level of endorsement of democracy displayed by electoral losers, and show that this can be measured by survey data much as Booth and Seligson and Gilley do in the works discussed above. Starting from the assumption that 'losers' consent is critical for democratic systems to function,' they find that the alienation of losers from the political system is most marked among repeated losers, and in new democracies where losers have no experience of winning and little confidence that

the rules will not be rejigged to their disadvantage next time. On the other hand, a negative attitude to the system 'is smaller when electoral rules are more proportional, when the political system has a greater number of veto players...and when power is shared within the political system' (p.185).

In both the above works the term 'consent' can be translated to mean 'subjective agreement with the norms of the political system and what constitutes rightful authority under it', and it clearly belongs to the normative dimension of legitimacy. The sense in which I use the term, however, is as a separate, performative, dimension, involving public acts of recognition or acknowledgement of authority on the part of subjects, which serve to confirm or enhance its legitimacy. I have called these 'actions expressive of consent', and the objection has rightly been made that not all actions under this heading can be taken as evidence of subjective agreement with the norms of a system, or be equally binding for future obligation to obey or support its power holders.

To take a range of examples of public actions which confer or enhance legitimacy, swearing an oath of allegiance is the most binding for future obedience, and is usually taken as evidence of subjective consent to an authority. For this reason most states require such an oath from the members of their military and civil apparatus, sworn either to the constitution or to the head of state in person. Taking part in an election, on the other hand, may not necessarily express agreement with the norms of the system, as the authors of *Losers' Consent* empirically demonstrate. However, participation on the part of those who may lose certainly serves to enhance the legitimacy of the winner(s), which is why parties sometimes choose to boycott an election altogether. Even more clearly, the mass mobilisations organised by or on behalf of an authoritarian regime tell us little about the state of mind of those participating, though they certainly serve as impressive public endorsements of a regime and help to demoralise its opponents.

So, to avoid confusion, or any exaggerated claims, it may be clearer if we simply drop the term 'consent' in this third performative aspect of legitimacy, and refer to acts of recognition, acknowledgement or engagement, from which authorities can derive legitimacy to a greater or lesser extent. The important point to emphasise is that legitimacy is constituted by actions as well as beliefs, and that this aspect is underplayed in much of

the literature on legitimacy, which concentrates on the subjective dimension alone. Avoiding the term 'consent' also has the advantage of including in such legitimacy enhancing actions the acts of third parties who stand outside the authority–subject relationship. This is particularly relevant for political regimes in the contemporary world, where acts of recognition or endorsement by other states and international bodies can considerably enhance their domestic legitimacy.

In a pertinent analysis of the legitimacy of the Chinese state, Heike Holbig (2011) gives considerable weight to its increasing recognition by the international community. China enjoys high international status, she argues, both as leader of the developing nations and as an equal partner of the developed ones through its membership of the G20, WTO, IMF, etc., not to mention its role as a key regional player. This status has only been enhanced since the global crisis of 2008, and China's comparatively successful recovery from it. Holbig sees this increasing international recognition as an important resource for China's internal legitimation. 'Explicit acts of recognition by the international community', she writes, 'represent a direct form of external legitimation that can be readily reproduced in the national discourse' (p.178). In particular, this recognition can be used to compensate for the lack of any manifest public endorsement domestically, whether in the electoral or mass mobilisation mode. Generalising from the Chinese example, Holbig argues that an international dimension should be added to the three-fold configuration of domestic political legitimacy; and she shows how an analysis can follow from this of a dynamic interaction between internal and external legitimation strategies, which may be compensatory, reinforcing or sometimes mutually contradictory. This process of interaction is explored further in the review of literature on legitimacy at the international level which forms the subject of the next chapter.