

The Meaning of “Legitimacy” in World Affairs: Does Law + Ethics + Politics = A Just Pragmatism or Mere Politics?

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Discusses recent efforts among theorists of world politics to defend a supposed concept of international legitimacy. Reviews claims that legitimacy is either primarily an empirically verifiable condition or a normative one, and finds both claims unjustified. Argues that the “concept” of legitimacy is a completely incoherent idea — it is defended only through association with a wide range of more established social concepts, the result being that there is very little evidence that the concept itself has anything distinctive about it. Given this situation, it is misguided to persist in attempting to use such a fundamentally confused and tautological idea as an explanation for anything. Explanations offered on the basis of confused ideas are themselves bound to be confused. “Legitimacy” should be left behind in favour of concepts that are more substantial and more important to analysis and theorization of world politics.

Keywords: legitimacy ▪ world politics ▪ conceptual analysis ▪ ethics ▪ Orwell

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I. The Problem

A growing number of theorists now accept that there exists a “concept of legitimacy” that is somehow important to political, legal and ethical research on world affairs. But as I will show, there is very little to justify this view. “Legitimacy” presents a problem for these fields of research not only due to its inherent vagueness, but also to failure on the part of those who use the idea without having shown convincingly how it is coherent or even necessary in the first place.

This is the general observation that prompts the argument of this paper, which is that the conceptual innovation that is global or international legitimacy (for brevity, hereafter simply “international legitimacy”) leads not to enhancement of the conceptual repertoire available to world politics researchers but to its impoverishment by dulling understanding of a whole range of other, more important concepts. This is happening out of a lack of caution about conceptual distinctions and lack of careful judgement as to where and how conceptual innovation is required and what the possible consequences of such transformations might be.¹

In light of the confused fascination it causes among world politics theorists, an analogy can be made between advocates of the notion of international legitimacy and door-to-door salesmen. Rather than responding to the knock on the door of the conceptual house of world politics as one should, by requiring that the seller first demonstrate what he has to offer and why we should consider this beneficial before letting him in, the international legitimacy salesmen (many of whose work will be discussed in the text below) have already succeeded in selling their commodity to a

¹ I borrow the term “conceptual innovation” from Koskenniemi (2003).

field that has very little idea of what it has acquired, what to do with it, whether it ever needed such a thing in the first place, or what the costs of using it might be. True, the idea of international legitimacy looked inviting since the salesmen did their best to package it as a fully-fledged concept which we just couldn't do without if we wanted to understand world politics in the post-Cold War era. The idea of legitimacy was sold in glowing terms: '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' (Beetham, 1991: 33). But once unwrapped — unpacked, to use a popular expression — one cannot help but notice that the brand of legitimacy claimed by recent proponents to be so beneficial to the study of world politics does not do exactly what it says on the box. Worse still, remove the packaging as I will do in this paper, and we soon see the box is empty.

But, some might protest, there must be something in the idea of international legitimacy that makes it worth another chance? My position is that over several years of interest in the idea in research on world affairs, the notion of legitimacy has been given ample chance, in the form of efforts to establish its importance that have led nowhere and only distract from more important issues. Continued attempts to defend this vague notion as a concept in its own right are both theoretically unjustifiable and practically harmful. Why? Because defences of an empty idea demand a degree of conceptual innovation which in this case is unacceptably high because it involves not only conjuring a “concept” of international legitimacy out of thin air but also the addition of far-reaching qualifications or modifications to other concepts, obscuring the meaning of those ideas in the process. Although conceptual development and innovation is inevitable and often useful, it is not “innocent”; it involves the transformation of already-existing ideas, not necessarily better-formed ones. Innovations do not always fit seamlessly into the existing conceptual fold, and as such will inevitably be used to challenge some condition of applicability, some “space of meaning” currently occupied by another concept.²

Now, I do not suggest this is necessarily a bad thing. Given the contributions to the study of conceptual history and conceptual change of the so-called Cambridge School and others, it would require no more than ignorance of the fact that concepts are always tied to historical, cultural, situational and other types of changeable conditions to

² As might already be evident from such a view, my approach to discussing conceptual innovation draws loosely on Hart's (1952) idea of 'defeasible concepts', i.e. those whose meaning or applicability in specific circumstances are modified or annulled by the presence of certain limiting factors or of more applicable concepts.

advocate any kind of conceptual Puritanism. But any suggestion of the untouchability of social concepts is not after all the point; instead, in referring to the transformations involved in conceptual innovation I want to draw attention to some overlooked side-effects of defending a “concept” of international legitimacy by simply laying claim to already-occupied conceptual territory. World politics theorists’ enthusiasm in promoting legitimacy as an analytical category should be moderated by consideration of how this innovation may undermine and obscure the meaning of neighbouring ideas such as law, morality, authority, democracy and justice. Interpretations of these genuine social concepts, I will argue, are undoubtedly affected — and there is no reason to think for the better — through the as-yet ill-considered outcome of the current rush to contrive an internationally or globally applicable theory to flesh out a redundant word, legitimacy.

But to get to these main branches of the argument, we must first examine the roots of the problem by surveying the current state of debate in world politics research on legitimacy. In particular, since my main argument rests on dissatisfaction with the prevalent tendency to distinguish between descriptive (/empirical/factual) and normative views of legitimacy, I focus on disputes concerning this distinction in the literature so as to show why I regard both sides of this particular fact-norm divide as unpersuasive.

II. “Legitimacy”: Fact, Norm or Illusion?

International affairs have been the focus of growing interest in the concept of legitimacy, driven most notably by the controversies of the 1999 NATO bombing of Kosovo and the ongoing Iraq war (e.g. IICK, 2000: 290; Chesterman, 2002; Koskenniemi, 2003; Kagan, 2004; Clark, 2005; Bjola, 2005; Mulligan, 2005; Scott and Ambler, 2007). Nonetheless there is still no clear view of how such a concept could be significant despite, as Mulligan notes (2005: 351), the term “legitimacy” being continually used in world politics research as if its meaning (and significance) were self-evident.

One could of course treat the obscurity of legitimacy as little more than an occupational hazard in the life of any concept — after all, it has long been established that contested interpretations of social concepts form an essential part of their application and development.³ This cannot be denied, but one should maintain a

³ On the “essentially contestability” of social concepts see Gallie (1956); see also Hart (1952) for a comparable and equally interesting argument for the “defeasibility” of certain concepts.

separation as Gallie did between concepts that are controversial because of the degree and intensity of disagreement as to the interpretation most appropriate to them, and concepts which are so confused as to be in effect meaningless.

I will argue that there is insufficient coherence about the notion of legitimacy to save it from the latter category. At most it seems a vague and often suspiciously arbitrary composite of associations with other concepts, a great many of which have been invoked in attempts to “explain” it. These include consent (Brighouse, 1998: 720-1); authority (Hurd, 1999); justice (Steffek, 2006); the ‘moral basis for social interaction’ (Kelman, 2001: 55); normative belief that a rule or institution must be obeyed (Grafstein, 1981: 456;⁴ Franck, 1990; Hurd, 2007: 30; Boyle and Chinkin, 2007: 24); popular sovereignty (Beetham, 1991); democracy (Beetham, 1991; Buchanan, 1999; 2002; 2004; Buchanan and Keohane, 2006), and “right” or rightfulness (Rousseau, 1968 [1762], especially Book I, Chapter I; Friedrich, 1963: 200-205; Williams, 1996; Cranston, 1985: 39, n.2; Dahl and Lindblom, 1992: 114; Zelditch, 2001: 51; Coicaud, 2001: 259; Mulligan, 2005: 358-9; Hurd, 2007: 30). The list could go on, and would only reinforce the point: supporters of using legitimacy as an analytical category go to great effort to embellish an idea that has precious little conceptual character of its own to sustain it.

Faced with such a welter of interpretations, two possibilities most clearly suggest themselves. Either legitimacy is ‘the central issue in social and political theory’, as Beetham claims (1991: 41), which would then explain why so many other key concepts seem to revolve around it. Or, it could be that those attracted to the idea of legitimacy are forced to explore as many associations and conceptual links as possible in their eagerness to establish a notion that is profoundly vague and, in the absence of any properties to make it distinctive amongst other concepts, quite possibly redundant. Below I will explain why I find the former view impossible to justify, after which I discuss in greater detail why I take the latter position.

In showing the insurmountable difficulties facing the first view by way of a necessarily over-brief review of recent literature, there are two critical points I wish to establish so as to be able to proceed with the argument in favour of the second position. First, I argue against the view that legitimacy is an empirically verifiable quality or fact of world politics (II. a.).

⁴ ‘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’. It is evident from this that Grafstein supports a restricted interpretation of the concept of legitimacy, one that to my mind coincides closely with the concepts of governmental legitimacy and illegitimacy as Roth (2000) discusses them.

The second, related point to be made in this section is equally important to setting the framework for my later argument. Here I will argue that it is also hard to justify treating legitimacy as a normative factor (II. b.). The essential quality of any valid norm is that it *inconveniences* certain forms of behaviour, which presupposes that norms, although they may vary in the explicitness or consistency of their demands, are at least *coherent* in their prescriptive or prohibitive obligations. As will be seen, the difficulties of understanding the notion of legitimacy as either empirical or normative are mutually reinforcing.

II. a. Legitimacy as an Empirically Verifiable Condition

First, to consider arguments that legitimacy is a factual or empirically verifiable phenomenon. For brevity, and taking the term from one of its recent advocates (Steffek, 2003: 250), I will refer to these as claims for empirical legitimacy. Defenders of this notion claim that the effects of legitimacy are important to the explanation of conduct in world politics and in international society (e.g. Beetham, 1991; Sadeniemi, 1995; Clark, 2005; Steffek, 2003, 2006; Hurd, 2007). In a short paper I cannot argue against this position in the detail that would be indispensable to a full-length article. More importantly, however, I think an involved argument to this effect would amount to flogging a dead horse, because the case against empirical legitimacy has been made elsewhere (Pitkin, 1972: 284-5; Grafstein, 1981: 458-469; O' Kane, 1993, esp. 474-477; Mulligan, 2004: 477-480; 2005: 367-372; Applbaum, 2004: 76-80), and so convincingly that this should be a closed case.

But it is not, so we should consider what continues to be at issue here. From where from where did the view that legitimacy is an empirically observable factor emerge? The separation between empirical and normative forms of validity of social concepts was most famously made by Max Weber in *Economy and Society* (1968 [1921]: 32-3). Weber himself applied this general methodological distinction to his discussion of legitimacy in the same work (1968, esp. Vol. 1, Part 1, Chs.1 and 3). Of studies of legitimacy in the context of world politics, the tendency to distinguish between empirical and normative forms has been followed by, among others, Beetham (1991: 5-6), despite his severe criticisms of Weber's account of legitimacy (see pp. 6-14, 23-25), and more recently by Steffek (2006: see esp. 17-19) and Hurd (2007: see esp. 31, 195).

Here I want only to mention the main deficiencies in the idea that have already been highlighted, and to draw attention to the fact that those who continue to advocate the notion of an empirically verifiable quality of legitimacy seem to do so not by meeting the counter-arguments that have been made in the past, but by simply ignoring them. For instance, neither Steffek (2006) nor Hurd (2007) seem to have paid any attention to the criticisms of Weber's view of legitimacy despite there being an extensive amount of serious criticism that if properly considered would make continued endorsement of the Weberian model a hard option to defend. Moreover, these counterarguments have so solidly refuted the claims to empirical legitimacy that it would be far more productive to concentrate in this paper, as I will shortly do, on the implications of the failure of the empirical case for any further discussion of legitimacy. Given this situation, I will summarize briefly what is at issue with claims to empirical legitimacy, and why these claims have been found to be so comprehensively flawed.

As O' Kane (1993) has argued in a review of Beetham's *The Legitimation of Power* (1991) and in criticism of his efforts there to argue for the empirically verifiable value of legitimacy, such attempts are highly unreliable. Neither compliance nor consent, for example, can be accounted for by reference to "legitimacy" as the decisive factor in their attainment, because such an over-generalization is too likely to obscure the complexity and variety of involved in any given case. Against Beetham's claims, O' Kane (1993: 475-477) argues that a population's failure to revolt against an oppressive regime may indicate that the regime's subjects are dominated by fear, restricted by the difficulty of coordinating resistance actions under conditions of intimidation and surveillance, or by other factors the variety of which will probably depend on conditions specific to the case at hand. What it does *not* indicate is that inaction, consent or acquiescence in such a case can simply be accounted for by claiming that the population is thereby expressing its belief in the ruling regime's "legitimacy". Such a belief may of course exist, but will hardly in any case be an adequate substitute for a more reasoned analysis. It is less likely to add to explanations than it is to be meaningless, and thus an impediment to understanding the real complexity of any situation.

A major reason for legitimacy's clouding of any issue to which it is introduced is that despite the mass of conceptual associations made in defence of the idea there is little clarity as to where its distinctiveness might lie. As a consequence, it is premature to attempt to use the idea as an aid to explanation of any empirical issues without first attending to this fundamental confusion. But recent defences of the idea of legitimacy in world politics do not do this; instead they proceed to apply a profoundly obscure notion

(e.g. Steffek, 2003, 2005; Hurd, 2007) or else offer convoluted Wittgensteinian accounts of why the 'use' of legitimacy does not actually depend on understanding the meaning of the concept (Mulligan, 2005; but especially Kratochwil, 2006). The latter type of argument in particular looks suspiciously like special pleading on behalf of legitimacy: insisting on the importance of a concept while admitting its subtlety is one thing, insisting while being unable to account for its incoherence is another, less promising tactic. To my knowledge there is yet no study which convincingly explains legitimacy's position, and therefore its importance, relative to other concepts.⁵

Obviously the claims I have just made deserve greater attention and more detailed evidence than can be given in a short paper, they can at least be given some credence with two examples from the recent literature. In his recent study of the role of international legitimacy in decision-making in the United Nations Security Council, Hurd (2007) argues that legitimacy 'refers to an actor's normative belief that a rule or institution ought to be obeyed ... The Council's authority depends on its legitimacy, and therefore its legitimation and delegitimation are of the highest importance to states'.⁶ This is one of the foundations of Hurd's overall argument (2007), and leads that argument to a logical dead end. Legitimacy is important because authority depends on it: 'When an actor sees a rule as legitimate, the rule has been internalized into interests and takes on the quality of becoming authoritative over the actor' (2007: 61). Preceding this, Hurd defines a legitimate institution as one which 'occupies a position of authority in society, and in international relations authority signals the existence of sovereignty' (2007: 60). Hurd has set out to establish why legitimacy is 'the governing concept' in the relationship to authority, but that the two are nevertheless 'natural complements (2007: 29, 30). All he has succeeded in doing however is begging the question of the necessity of the idea of legitimacy in the first place: why does one need any term for 'the quality of becoming authoritative' other than authority itself? In any case, Carl Friedrich long ago argued (1963: 202-4) that the relationship between authority and legitimacy is precisely the opposite of what Hurd claims: 'only by reasoned elaboration in terms of the community's ideas, values, and beliefs, is authority added to the exercise of power, whether autocratic or democratic. Power thus reinforced by authority acquires the capacity to create law that is right and just by making it legitimate' (Friedrich, 1963: 204).

⁵ Clark (2005) perhaps comes closest, but is still far from a convincing account; for criticism see later parts of the text.

⁶ From the inside cover and p. 6.

If the confusion that plagues legitimacy's relationships to other concepts were properly attended to, either the notion of international legitimacy could be taken some distance towards clarification or, as I believe would be a more likely result, it would become clear that there is no need for it. If what we really want to do is understand specific developments in international politics, then perhaps we already have all the concepts we need — justice, authority⁷, law, morality, democracy, and so on. When difficulties arise, what are at issue are disputed interpretations of some, or even all, of the concepts involved.

This brings me to the second example of the conceptual confusions in which debates on legitimacy are mired, this time in relation to the NATO bombing of Kosovo in 1999. The report of the Independent International Commission on Kosovo (IICK) on the military intervention and the events leading up to it illustrates well how controversies about the proper interpretation of commonly-used concepts are further confused by resorting to vague associations and oppositions, this time between legitimacy and legality. The IICK (2000: 10, 288-9) argued in its Report:

Experience from the NATO intervention in Kosovo suggests the need to close the gap between legality and legitimacy ... The intervention was legitimate, but not legal, given existing international law. It was legitimate because it was unavoidable: diplomatic actions were exhausted, and two sides were bent on a conflict which threatened to wreak humanitarian catastrophe and generate instability through the Balkan peninsula.

Against this, Clark argues (2005: 212) against presenting legitimacy as a condition that can be in such clear opposition to legality. In discussing the Kosovo case, he argues, legitimacy 'needs to be transcribed as a coded word for morality, thus capturing the tension between morality and legality, not the purported one between legitimacy and legality'. But this raises two implications, both of which go against the idea of "international legitimacy" which Clark's book is intended to defend. First, rather than 'transcribing' legitimacy as a code word for morality, why not just speak of morality? The controversies would remain, but at least they would be kept in the open rather than being obscured by moving from a contested concept (morality) to one that is simply incoherent, legitimacy.

Second, throughout the book Clark (2005) claims that legitimacy is important to international society but here suggests that controversies surrounding claims to it can be

⁷ According to Friedrich (1963: 201-3), one of the most significant difficulties with legitimacy concerns its frequent confusion with the concept of authority. I will argue however that the conceptual confusion that plagues the idea of legitimacy is even more general than this.

resolved by ‘transcribing’ the ‘apparent tension’ that the use of the term causes into other terms. This is a case of wanting to have one’s cake and eat it: Clark insists that international legitimacy, ‘despite being highly indeterminate ... , is no less important for being so’ (2005: 256), but in the earlier comment on the Kosovo debate is unwilling to allow the idea of legitimacy itself to be challenged, despite being clearly controversial. ‘Tension’ is instead shouldered onto other concepts, legitimacy being quite conveniently ‘transcribed’ out of criticism’s way. As with Kratochwil (2006) and Mulligan (2005), this is another case of special pleading on behalf of an unnecessary and incoherent conceptual innovation.

II. b. Legitimacy as a Norm

This brings us to the other side of the divide in current debates on legitimacy, the idea that it is not primarily empirical but instead normative. As such, to invoke legitimacy would be to make claims against another, with the added condition what we would ourselves thus become committed in some way by the same claims we make. All this however entails that, as a norm, there would be some shared knowledge of what “legitimacy” actually entails. Although norms are obviously social constructions and therefore subject to continual development and contestation, by definition they convey demands: ‘they command, oblige, recommend, or guide. Or at least, when we invoke them, we make claims on one another’ (Korsgaard, 1996: 8). It is generally agreed that norms involve some “ought”-conditions.⁸

With invocations of legitimacy, however, there seems to be very little idea of what is actually being demanded when one invokes it. At most the claims involved seem overwhelmingly negative; that is, “legitimacy” is called on when one wishes to call into question or reject the applicability of positive normative demands, such as those made on legal⁹ or moral grounds. I will discuss the possibly normative nature of legitimacy by reference to one recent study, Ian Clark’s *Legitimacy in International Society*. Although an interesting historical account of how legitimacy has been present to different degrees in the negotiation of major peace treaties from the Peace of

⁸ However, Dancy (2000: vii-viii) suggests things may not be so clear: rather than it being only deontic, i.e. “ought”-statements which carry normative, descriptive/evaluative, i.e. “is”-statements may also in some cases be normative: ‘Perhaps, then, it would be better not to have any single term like “ought” as the mark of the normative, and to say merely that normativity is a feature common to both sides of the evaluative/deontic equation’. These questions, nonetheless, must be set aside as being outside the scope of the present paper.

⁹ E.g. IICK, 2000: 4, 10, 25, 165, 186, 288-292.

Westphalia to the United Nations Charter, Clark's position on whether legitimacy is or is not normative is one of the most consistently confusing aspects prominent throughout the book. On p. 4 he states that 'power suffuses legitimacy, but does not empty it of normative content'; near the end of the book, however (p.207), Clark is quite sure that legitimacy, as a 'composite' or 'aggregative' quality, does not actually have any normative content of its own. The quote above from p. 4 would suggest that Clark considers legitimacy to be normative, but that is not so. Instead, he identifies (2005: 4) three principal norms — consensus, legality, morality, and 'constitutionality'¹⁰ — to which legitimacy is contingently related: "legitimacy — to the extent that it is normatively grounded — draws upon the values found under these other three headings".¹¹ This discussion is however developed throughout the book in such a way as to offer very little suggestion that even Clark himself is sure of legitimacy's normative status.

But of other studies of legitimacy the majority do not even go as far as Clark in attempting to clarify the issue, most being content to merely refer to legitimacy as a normative condition (see works cited on pp. 3-4 above) without considering what this might entail. As noted, in efforts to explain legitimacy as either an empirical or a normative condition, conceptual associations have been offered at such a rate that the whole subject has become heavily laden with confusion. This leads to great difficulty in applying the notion of legitimacy to any concrete issue, as it serves to distract and obscure far more than to explain. Not only that, but the mass of associations offered in explanation and support of the idea of international legitimacy leads to the suspicion that any idea which is so readily subsumed within so many others lacks an identity of its own. This problem then feeds back into the difficulty of seeing any clarity in the idea of empirical legitimacy; one is again forced to reach for conceptual associations to substitute for legitimacy's lack of substance. This has been shown also by Applbaum (2004). Although I do not find convincing his attempt to defend legitimacy as a normative factor (for reasons I shall shortly turn to), Applbaum seems partly correct in arguing (2004: 76-80) that the idea of empirical or descriptive legitimacy presupposes, or in his phrase (2004: 79) 'is parasitic', on the 'conceptually prior idea of normative legitimacy'.

¹⁰ For Clark's use of this term, see *ibid.*, 19, 209-10, 220-6. He credits the idea to G. John Ikenberry: see pp. 29-32 of Ikenberry's 2001 book *After Victory: Institutions, Strategic Restraint and the Rebuilding of Order After Major Wars* for his stated meaning of 'constitutionality'.

¹¹ Clark (2005: 4) identifies consensus as a further, fourth normative condition upon which legitimacy 'draws', but, confusingly, throughout the book seems unable to decide whether it is important to the development and maintenance of legitimacy.

Parasitic or not, it is useful to consider how the divorce and continued difficult relationship between supposedly empirical and normative strands of legitimacy developed. The separation seems to have originated with Weber, who in discussing legitimacy heeded his own insistence on the need to ‘distinguish between the normative and empirical meaning of validity’ in conducting social research (Weber, 1968: 32-3). For Weber, a ‘system of domination’ is legitimate to the extent that ‘the appropriate attitudes will exist, and the corresponding practical conduct ensues’.¹² He thus offers only the empiricist, and circular, view of legitimacy as simple belief in the presence of legitimacy.¹³

I say Applbaum is ‘partly correct’ in criticizing claims to empirical (which he calls descriptive) legitimacy, because although he develops one of the most interesting conceptual analyses in defence of normative legitimacy that I have so far come across, he fails to persuade that the basic idea of legitimacy, normative or otherwise, is not conceptually redundant. Applbaum (2004: 76) defines normative legitimacy as ‘genuinely having the moral right to rule’, which does not make his categorization immediately applicable to the international context. Nonetheless, at the end of this paper discussing the conditions necessary for normative legitimacy in the domestic context he confidently asserts: ‘The ground is now prepared for a normative conception of legitimacy’ that, among other things, ‘[c]ontains a robust account of justified governmental disobedience of legitimate international law’. As he quickly notes, such an account does not yet exist (Applbaum, 2004: 91) — but there is very little in the argument he has made to suggest any ‘prepared ground’ awaits for such a case.

Legitimacy, then, is hard to justify as either empirically or normatively significant. In any case, the debate between normative and empirical conceptions of it may misleadingly suggest a neat separation between these conditions that is difficult to justify on logical grounds (see section III). Weber’s separation seems at best only a methodological convenience, and a questionable one at that.

III. Feelings, Values and Explanations

Having thus summarized the cases against the views that legitimacy has empirical and normative value, one may well start to wonder what in my view is left of the whole idea

¹² Weber, 1968: 213-4, emphasis his.

¹³ For a detailed critique of Weber’s approach to legitimacy see Grafstein, 1981.

of legitimacy. There seem to be no instances, problems or circumstances where one could not find a concept to express, discuss, or understand without having to turn to “legitimacy”, a term which denotes nothing more substantial, or less arbitrary, than a ‘kind of feeling’ (Hurd, 1999: 381). Hurd (1999: 381) defines legitimacy as ‘the subjective feeling by a particular actor or set of actors that some rule is legitimate ... saying a rule is accepted as legitimate by some actor says nothing about its justice in the eyes of an outside observer.’¹⁴ In short, although the Weberian separation between empirical and normative defences both fail to convince we are left, as in Hurd’s 1999 article and his recent book on the subject of international legitimacy (2007), facing a stubborn adherence to Weber’s approach in disregard of the many serious objections which have been raised against it.

Rather than continue to press the issues of legitimacy’s empirical or normative credibility, Hurd’s definition at least offers another route to move things forward, by providing an opportunity to consider the following question. If as I have argued legitimacy is neither empirically verifiable nor normatively coherent, then what would be the significance for world politics of the existence of such a “feeling”? If it were indeed found to be a significant condition in world political debates, as Hurd (2007) argues, then what are we dealing with? — if a “feeling” of legitimacy is important to world politics, i.e. as a shared conception of what is desirable in a given context, then we must indeed be faced with a norm. But we run straight back into the same difficulties, since normativity implies shared, or at the very least mutually intelligible, conceptions of the conditions which make up a particular practice; as Ullmann-Margalit notes (1977: 14), the concept of social norms is clearly a ‘collectivistic’ one. Or as Ross remarks (1968: 82), a norm is ‘a directive which corresponds in a particular way to certain social facts’. But Hurd (2007: 30) explicitly contradicts this: ‘Legitimacy refers to the belief by an actor that a rule or institution ought to be obeyed. Such a belief is necessarily normative and subjective, and not necessarily shared with any actor’ (Hurd, 2007: 30). But this would suggest that legitimacy for Hurd, because it is a subjective “feeling”, constitutes a private norm. As with Wittgenstein’s famous example of a private language, this would make no sense — a norm exists only to the extent that it is shared and thus made at least potentially intelligible (though not necessarily acceptable) to others. And if it is normative, legitimacy would influence behaviour (see Korsgaard, 1996) — which in turn means that it would have empirical value because it would then produce observable effects. In practice of course it would be hard to reliably

¹⁴ Footnotes omitted.

attribute particular effects to any particular norm, as O’Kane (1993) has indeed argued in her criticism of the idea of empirical legitimacy.

‘Feelings’, then, are in my view not an appropriate foundation for the claim that ‘legitimacy matters to international institutions and to the nature of the international system as a whole’ (Hurd, 1999: 403). Perhaps it would be more beneficial to ask whether it is appropriate that the efficacy of international rules and institutions should hinge on some ‘kind of feeling’ rather than on positions which through being accessible to debate and transparent deliberation are therefore at least potentially applicable on a general level. What is at issue then, Hurd’s subjective interpretation notwithstanding, is that there must be something “objective” about legitimacy in order for it to have any significance as a shared conception of validity — as a norm, or as a value.

Rescher (1997: 172-196) argues that contrary to the predominant view established by Hume,¹⁵ objectivity about values is indeed possible. But ‘value objectivity’ as Rescher defends it refers to explicitly-stated evaluations arrived at through rational deliberation (1997, esp. 176-188); this, again, would rule against treating Hurd’s essentially solipsistic conception of legitimacy as a significant factor for analysis of world politics. Even if “legitimacy” was plausibly identifiable as a value, that is (following Rescher) something more substantial, rationally defensible and thus more publicly accessible than the private arbitrariness of Hurd’s view, in what way could we then consider it significant to the conduct and analysis of world politics?

The answer to this would depend on the use to which values are put. As regulative ideals, values are certainly important. But, as with feelings, when one seeks to use values as explanations the problem of subjective interpretation again arises, and causes severe difficulties. Some of these difficulties have been discussed by, among others, Barry (1970: 75-98) and, in direct relation to the question of legitimacy, Friedrich (1963: 200-205). Barry’s objection to values as explanations is that although values obviously have some explanatory use, they are caused by some set of antecedent factors and so are themselves in need of explanation. Thus, using values to explain a given instance of behaviour all too easily leads to question-begging. In the case of legitimacy, as Friedrich observed (1963: 201-2), Weberian views of it (which includes Hurd (1999, 2007), Steffek (2006) and many other recent accounts in world politics research) emphasize its hidden, psychological features. Friedrich, like Barry (1970) would later do, argues that the objective meaning of a value cannot be determined by reference to its

¹⁵ Hume made his famous distinction between “is” and “ought” in *A Treatise of Human Nature* (book III, part I, section I, paragraph 27; Hume, 2000: 302).

subjective meaning, i.e. its individual ‘psychological aspect’, without leading to tautology (1963: 202-3). As he puts it, ‘the psychological aspect is merely a transitional phase’; to determine the empirical significance of a value ‘it is of decisive importance to ask upon what such devotion, such faith, or such expectations are based’ (1963: 202). This entails giving reasons, which as we have seen is for Rescher also (1997) the foundation upon which the objective validity of values must be based. Without it, feelings cannot rise beyond the level of individual conviction or preference to become something of broader significance.

Summing up, as we have seen attempts to justify legitimacy as a significant element in world politics run into serious difficulties, all of which when traced lead back to two fundamental problems: (1) neither empirical nor normative significance can be convincingly attributed to legitimacy, since attempts to do invariably involve a mass of conceptual associations, the outcome thus being only to beg the question: what is conceptually *distinctive* about the idea of international legitimacy? (2) The difficulties of establishing a concept of international legitimacy on either empirical or normative grounds feed back into each other; which suggests only that the attempts to separate these two qualities, at least as far as the concept of legitimacy is concerned, are bound to fail. And when they do, we are left wondering why it is that some theorists continue to insist that such a fundamentally confused concept as legitimacy, at least when applied to world politics, could yield anything but confused explanations.

It may well be that “legitimacy” is attractive not for its explanatory value but for its ability to obscure and mystify a discussion — to create, as Woodfield (1976: 7) remarks in a different context on the invention of names for unknown or misunderstood causes, ‘a comfortable illusion of understanding’. Although the word legitimacy — as distinct from the concept — is not in my view meaningless, it is relevant here to quote again from Orwell (1946: 91), on the subject of ‘meaningless words’: ‘Words of this kind are often used in a consciously dishonest way. That is, the person who uses them has his own private definition, but allows his hearer to think he means something quite different’. As I have argued, what Hurd advocates (1999, 2007) amounts to nothing more than a private definition of a supposedly momentous concept. Koskenniemi has noted that “legitimacy” is currently popular precisely because of the potential it offers for obscurantism: ‘[legitimacy] discourse is not about normative substance, but its point is to *avoid* such substance [...], dissimulate a substantive void that blunts legal and political criticism and lets power redescribe itself as authority *on its own terms* [...] and nonetheless to uphold a *semblance* of substance’ (2003: 367-8, emphasis his).

But where does all this leave us? With a growing body of research on “legitimacy” in which anyone seeking meaningful explanation or genuine theoretical innovation will find little inspiration. The notion of international legitimacy is a house of cards but enthusiasm for the idea makes it, at least for the time being, a reality. The pragmatist philosopher William James (1968: 101) held that ‘[a]nything is real of which we find ourselves obliged to take account in any way’. There would be no excuse for ignoring the notion of there being such a standard of validity as “international legitimacy”. Implausible as I find the idea, others take more serious account of it, and the steadily growing volume of discussion being dedicated to it in research on world politics is real enough. It might seem unjustified to conclude that all these proponents of legitimacy are merely following the same theoretical fashion; nonetheless, of the many intellectually challenging concepts which exist, I cannot find reason for attempting to examine any aspect of world politics in terms of an idea so muddled, tautological and analytically unrewarding as legitimacy.

IV. Politics and Evasive Language: What Would Orwell Say About “Legitimacy”?

[A] mixture of vagueness and sheer incompetence is the most marked characteristic of modern English prose, and especially of any kind of political writing ... Words like *phenomenon, element, individual* (as noun), *objective, categorical, effective, virtual, basis, primary, promote, constitute, exhibit, exploit, utilize, eliminate, liquidate*, are used to dress up simple statements and give an air of scientific impartiality to biased judgments ... The result, in general, is an increase in slovenliness and vagueness. (Orwell, 1946: 87, 89-90)

The only parting thought we need add is that when tempted to support an argument by referring to “legitimacy”, those with an interest in avoiding unnecessary confusion might benefit from the wisdom of George Orwell. In ‘Politics and the English Language’, Orwell (1946) harshly criticizes the state of contemporary political writing in English. The italicized words in the above quote were given by Orwell as examples of ‘pretentious diction’ (1946: 89-90). If he were alive to encounter much of what has recently been written in books and articles on legitimacy, it is very likely he would include the term in the same category.

In keeping with the style of writing and argumentation Orwell defends in ‘Politics and the English Language’, I should be direct about why I consider the present fascination with legitimacy in political theory to be an unfortunate one. I do not

consider “legitimacy” entirely meaningless: the word means ‘right’ or one of its derivatives, ‘rightness’ or ‘rightfulness’. What I do find meaningless is the suggestion that there is a *concept* of legitimacy which is somehow distinct from, and as Orwell might remark somehow more ‘scientific’ than the broad idea of rightfulness/right.

It is obvious that one cannot use the idea of right or some variant of it as an analytical category — terms far more specific are needed. “Legitimacy” is however inadequate for this task, simply because it is no more precise than the whole idea of right itself. But there are other concepts which are consistent with the general idea of right, and which in different ways elaborate different aspects and forms of rightfulness: justice, authority, morality, democracy. These, and others, are the lifeblood of political philosophy and affect to varying degrees every academic discipline that is concerned in some way with how we behave. Much has been written on them, and will continue to be written, and each one of them has strong practical significance outside of academia. None of this can be said of legitimacy, a term whose emptiness and air of philosophical sophistication seems to be understood only too well by those political practitioners who see in it a promising means of avoiding being drawn into debate in terms of genuinely normative categories, such as law, ethics, authority or morality:

Perhaps the better way to judge the legitimacy of the [ongoing] Iraq war is not as self-defense, but rather as a safety regulation. Iraq, with its marriage of [weapons of mass destruction], a hostile and repressive dictator, and support for terrorism, represented a threat to the international system. While in domestic law such actions might require “damages,” ... no one, yet, is calling for the other type of remedy permissible in the law, the restoration of the status quo ante — which would be the reinstatement of Saddam Hussein. That silence speaks volumes about the legitimacy of the Iraq war.¹⁶

The quoted statement displays an admittedly extreme example of an opportunistic attempt to justify as rightful a series of actions which failed to be established as such on any other grounds. But it reveals at least that the conceptual murkiness of “legitimacy” offers an attractive hiding-place for such opportunism. International legitimacy’s academic enthusiasts should perhaps take time to consider the possible effects that their promotion of a pseudo-concept will have on the genuine articles.

¹⁶ John Yoo (2003), then-deputy assistant attorney general in the Office of Legal Counsel of the U.S. Department of Justice, arguing for the inapplicability of international law and also of the prior justifications given by the US government for the 2003 invasion of Iraq.

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