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Political Legitimacy Under the Sociology of Law: Based on the Evolution of Political Legitimacy in the West

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Abstract

The concept of legitimacy changes with time and locations. This article concludes that the political legitimacy under the sociology of law is consistent with the degree of social equality and justice behind the scene by comparing the political legitimacy under the sociology of law during the time of German scholar Max Weber and American scholars Seymour Lipset and John Rawls. Through comparisons between the industrial and post-industrial societies, it is found that the interpretation of political legitimacy is heavily based on the needs of social development at that time, evolving from the legitimacy of individual actions, procedural legitimacy, and lastly, substantive legitimacy.

Key words: Political legitimacy; Validity; Legal authorization; Equality

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The concept of legitimacy changes with time and locations; that is, any legitimacy issues cannot be properly discussed without knowing the corresponding historical background. However, the differences in historical background should not limit us when discussing legitimacy issues at different times. Political legitimacy, as an important subject in political science, has its own

developing and evolving path. This article proposes a method to draw the key concepts of political legitimacy theories at different times and analyzes the relations between the emergence of political legitimacy and its social and political background. Methods that simply start from the political or legal practice are insufficient. Instead, sociology of law, which studies the social aspect of production and life of people at different times, has undoubtedly become the optimal choice. Thus, we decide to study the political legitimacy under the sociology of law.

1. METHOD AND FRAMEWORK

Born at the end of 19th century, the subject of sociology of law mainly focuses on the relationship between law and the society. Since the beginning of this subject, which studies the lawful perspective of the society and the social perspective of the law, the concept of legitimacy has become the main lead of its development. C. Montesquieu, who proposed the first definition of the sociology of law, believed in the principle that justice existed before the existence of legal systems (Montesquieu, 1995, p.7.) and the establishment of manual justice, and varied relations of fairness and justice had been established in the society. One should not search for justice of law in legal relations, but rather in social practice and among social relations. The British historical jurist H. J. S. Maine noticed the origin of the legitimacy of contracts during the institutional change of social relations from identity to contract (Maine, 1996, p.15); that is, following the law means legitimacy. German scholar Savigny thought that laws and constitutions must contain national consciousness. He explained the phenomena of laws through the common belief of a nation and cultural traditions. He believed that the code of conduct came from the national spirit and would loss its vitality without the national consciousness. That is, being legal means following the common belief of a nation (von Savigny, 2011).

The application of legitimacy in the analysis of politics started with John Locke, Jean-Jacques Rousseau, and Max Weber. Locke believed that only with the consent of the ruled and when people’s rights to life, freedom, and property were guaranteed could the rule be legal (Locke, 1982). Rousseau agreed to the previous argument and thought that the will of the public, which was under the sovereignty of the people and developed on the basis of a social contract, contained political legitimacy (Rousseau, 2011). Integrating the historical view and the historical social view, Weber believed that the legitimacy of the rule came from the ‘validity’ of it – the probability that the public was willing to be ruled. This validity, which is the probability of a specific group obeying a specific order, equals legitimacy (Weber, 1998, p.3). Since the initial concept of legitimacy in 20th century, which was the concept of electoral authorization legitimacy proposed by S. M. Lipset, the legitimacy of strong government that protected the public interests proposed by S. P. Huntington, the legitimacy of communication rationality proposed by J. Habermas, and the legitimacy existed in a well-ordered society proposed by J. Rawls, the field of political science focuses on the philosophical interpretation of the political legitimacy, meaning that the political operation must follow rules or laws of politics. Just as political legitimacy is understood from common sense, the political operation must meet the basic ethical and moral requirements of ‘goodness’ and ‘justice’ (Yan and Yi, 2004). The field of political science also focuses on the scientific aspect of political legitimacy, which includes the instrumental or operational significance of this concept and the method of its realization. This article analyzes the differences in political legitimacy theories proposed by Max Weber and American scholars Seymour M. Lipset and John B. Rawls (Yang, 2016) based on their different social and cultural backgrounds, reconstructs the political legitimacy theory under the sociology of law, and uncovers the logic behind the evolution of political legitimacy in the West.

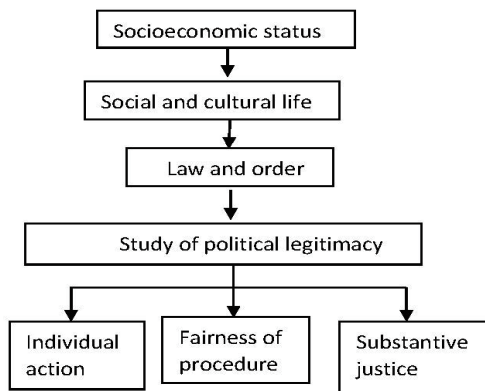


Figure 1
The logic framework of political legitimacy under the sociology of law

2. ANALYSIS OF WEBER’S ‘VALIDITY IS LEGALITY’ THEORY IN GERMAN TRADITION

Max Weber was born in Erfurt, Germany in 1864 and died in 1920. He was born during the political and economic rise of Germany. Most of his lifetime was during the completion of the Industrial Revolution after the establishment of the German Empire, during which he witnessed the prosperity of politics and economy in Germany. His studies on political legitimacy was deeply influenced by the political and social status at that time (Kaesler, 2004).

Germany was not a very united nation based on its races. The Germans did not feel comfortable with who they were. The Germans were still chasing wild bears into the primeval forest when the Greeks and Romans had already become republic nations (Ludwig, 2017). During their journey to the south, the Germans were unconfident and insecure. This was indicative of their collective consciousness or lack of consciousness, with an absolute obedience to authority. Under such circumstances, the Germans pursued fairness and power, and emphasized teamwork, which enabled Germany to catch up with Great Britain and France, and complete their industrialization in 19th century. These were the foundations of Weber’s theory of legitimacy.

Germany was a dualistic society, with theocracy and secular privilege existing independently. The separation of theocracy and secular privileges led to doubts about the origin of imperial power. This characteristic of its culture caused the economic development to be the driving force of social reform. This economic development mainly came from Friedrich Liszt’s German Customs Union, which broke the economic barriers among states, and the total industrial output within the Customs Union region became the third largest in the world, after Great Britain and France in mid-19th century. Following the economic development in Germany was the unification of politics and a social revolution. Uprisings and riots of workers during the Industrial Revolution, such as the Silesian Weavers in 1844 and the Great Railroad Strike in Prussia, prompted the government led by Otto Eduard Leopold von Bismarck to implement the social security system as a legislation. Sensitive to justice, the idea of ‘social state’ was deeply rooted in German tradition, and it emphasized the concept of state assistance. This was the socioeconomic basis of Weber’s political legitimacy theory.

Germany had experienced three political systems – Monarchy, Weimar Republic, and Codetermination. The constitutionalization of Germany was completed under the Monarchy. The political rules under constitutional government focused on authority, obedience, and teamwork.

In conclusion, the political legitimacy observed by Weber is the legal aspect of the ‘empirical validity’. ‘Validity’ is the probability that the public is willing to obey certain rules, and ‘validity equals legitimacy’ (Weber, 1998, p.3). Such validity is an order itself; that is, people put aside their motives and act in accordance with the ‘order’. Its empirical validity is its guarantee. It is ‘a set of complexities of reality and constraints on human’ (Weber, 1998, p.3). The law and order exist as long as there is a certain combination dedicated to the purpose of ‘law enforcement’ (Weber, 1998, p.10). Such law and order is supported by national coercive power. Most people act in a way that conforms to the legal norms, not as a legal obligation, but because such behavior is applauded by others or because it is just a habit or life routine. Therefore, Weber believes that the validity of law lies not only in the existence of authority, but also because people want to be praised rather than criticized by others.

3. ANALYSIS OF POLITICAL LEGITIMACY IN AMERICAN TRADITION UNDER THE SOCIOLOGY OF LAW

The United States is a country full of immigrants. ‘Mayflower’ has become more than just a ‘history’. It represents the pursuit of dream. It was their ‘rebellion’ against Europe and beginning of their new life (Fei, 2018, pp.13-35). Under this circumstance, scholars have formed different interpretations of political legitimacy based on their ethnics and intellectual backgrounds.

The first 69 years of Lipset’s life were spent during the time of Cold War. And his theory was undoubtedly a response to real life problems. He believes that political legitimacy comes from its effectiveness of economic development and political ruling. Here, effectiveness refers to actual political achievements. In modern society, a continuous economic development is the main manifestation of political achievements. However, in Lipset’s view, effectiveness does not equal legitimacy; rather, it is the necessary condition for legitimacy. Under certain conditions, political systems that can maintain a continuous effectiveness can also obtain political legitimacy.

	Effectiveness	
Legitimacy	A	B
	C	D

Source: S. M. Lipset. *Political Man: The Social Bases of Politics*. The Commercial Press: Beijing, 1993, p.47.

From this table, we can see that legitimacy comes with effectiveness, but effectiveness does not necessarily mean legitimacy. Legitimacy means that a political system is

able to maintain its existing political institutions that best meet the needs of the society. In general, legitimacy crisis often occurs during the social and economic structural changes. Therefore, a political system has to undergo corresponding reforms to meet the expectations of the public in order to maintain its political legitimacy. In additions, maintaining the continuity of the old system during this transition phase contributes to social unity and stability (Lipset, 1993, pp.3&4). To Lipset, true political legitimacy was more like a belief that the existing social system was the most appropriate one for the current society. Such belief is based on principle that ‘legitimacy of the contemporary democratic political system mainly depends on how it resolved key historical issues of the society.’ (Lipset, 1993, p.47) In a modern divisive or conflicting society, political legitimacy is a consensus of belief of the public about the ability of the political system to resolve social conflicts.

Lipset agreed with Joseph A. Schumpeter’s idea of democracy and believed that democracy has two advantages over other political systems: economic development (i.e. effectiveness) and legitimacy. Such legitimacy comes from the competition for political leadership advocated in Schumpeter’s theory, in which a democratic government is formed by representatives, who are elected by the public to carry out their will.

Rawls, in his study of political legitimacy, has proposed to establish a well-ordered society with structural justice. Here, a well-ordered society refers to ‘a society that is not only designed to advance the interests of its members, but also openly and effectively governed by a sense of justice. In this society, (1) everyone accepts and is aware of others’ acceptance of the same principle of justice, and (2) the basic social system generally satisfies and is generally known to satisfy these principles.’ (Rawls, 1998) Rawls also mentioned two additional basic principles of a well-ordered society: principle of equality and principle of difference. Principle of equality is the more fundamental and important one. It refers to equal opportunity. The principle of difference refers to the measures that need be taken under pre-existing unequal opportunities. Rawls regarded the distribution of talents as a joint asset and a shared, distributed benefit (regardless of the consequences of this distribution on each individual). Only in this way can the liberty of the two principles in ‘A Theory of Justice’ be achieved.

4. DEFINITION AND LOGIC OF THE EVOLUTION OF POLITICAL LEGITIMACY UNDER SOCIOLOGY OF LAW

The character for ‘law’ in traditional Chinese is written as ‘灋’ (Lexicographers of the Institute of Languages, Chinese Academy of Social Science, 2016), which was first discovered in the inscriptions of the Western Zhou

Dynasty. It consists three parts: ‘氵 (water)’, ‘馬 (Zhi)’, ‘去 (qu)’. ‘Water’ means a bowl of water with flat surface, representing fairness and justice; ‘Zhi’ is Xiezhi (i.e. Hachi), an ancient legendary beast that can distinguish between good and evil; and the meaning of ‘qu’ varies. The nature of law is fairness and justice. It refers to the reasonable arrangement of the public’s happiness, as well as handling relationships between two parties or multiple parties in disputes of interests. Here, the term ‘justice’ not only includes the institutional justice proposed by Rawls, but also includes justice of individual actions and social justice, which is composed of individual actions; that is, the realization of equality in individual rights and interests and even happiness through the pursuit of institutional justice based on individual actions. This is the ultimate goal of the law, the basis of law, and the fundamental principle of political legitimacy.

There is logic behind the evolution of political legitimacy.

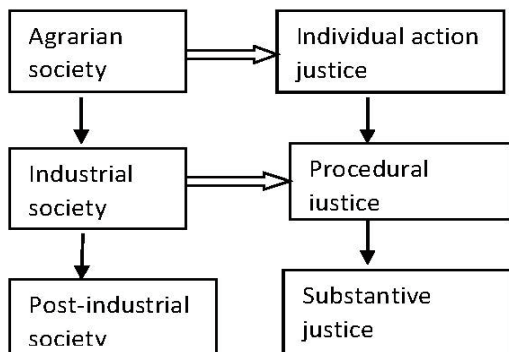


Figure 2
Political logic behind the evolution of political legitimacy under sociology of law

It is apparent from Figure 2. That traditional agrarian society implemented traditional social rule, and the basis of its rule lies in the individual action justice. As a legal system with social rule, the foundation of ruling in industrial society lies in the ‘bureaucratic’ procedural justice. In the post-industrial society, the relationship between man and land has shifted to a relationship between man and capital and information. Such changes of relationships between people and the surroundings directly affect the relationships among themselves. However, Rawls did not give answer to whether social classes become well-defined and solidified, and the gap between the rich and the poor is growing, or the social mobility is shifting toward a normal distribution under modernization. Literary such as ‘Hillbilly Elegy’ has shown increasing interdependence and cooperation among people under the social division of labor during the post-

industrialization period, and a growing gap between the rich and the poor. Thus, equality and sharing are the most needed fundamental values of the current post-industrial society. Politics that can promote equality and sharing will have political legitimacy, and those that oppose these values will be illegal. Such judgment and values are the inevitable for each individual, group, organization, and country that are under modernization. Everyone is accounted responsible regardless of one’s talents and opportunities. More talents, better opportunities, and more capital assets should only be used to build a better world, not to satisfy one’s selfish desires.

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