
LEGITIMACY OF PUBLIC INTERESTS IN PUBLIC POLICY¹

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Abstract. *In various sciences, the term legitimacy is used with differing meanings. In practice, in law it is the legitimacy of the legislative act, in political science it is the legitimacy of power, etc. Even the term interest, or public interest,, is interpreted differently in various sciences (in law, economics, political science, etc.). In public policy theory, P. Rosanvallon's understanding of democratic legitimacy proves to be productive, together with F. W. Scharpf's input and output legitimacy, which leads to a differentiation between the input legitimacy of group interests and the output legitimacy of interests, legitimated by the public.*

Keywords: *public interest, legitimacy, public policy*

Raktažodžiai: *viešasis interesas, teisėtumas, viešojo politika*

Introduction

In the title of this study, there are three terms that remain constant, alive, and often discussed in terms of content. Countless studies have been published on the subject of legitimacy, as they have been on the theme of public interest,, whilst remaining on the broader theme of public policy. In this study, we do not aim to deal with the entire range of problems associated with their definition in different disciplines by different authors, but only indicate the fact that, in this combination, some can have specific meanings that so far have been given only marginal attention.

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The concept of legitimacy has traditionally belonged to the spheres of interest of several branches of science. Since it is generally perceived as a concept native to legal theory, it can be found in all the main legal dictionaries and encyclopedias. For example, a respected American legal dictionary under the entry “Legitimacy” states: “Lawful birth; the condition of being born in wedlock; the opposite of illegitimacy or bastardy”; and in the entry “Legitimate”: “That which is lawful, legal, recognized by law, or according to law; as legitimate children, legitimate authority, lawful power, legitimate sport or amusement” (Black 1968, 1046). The view of the sociologist Max Weber is also well known, according to whom legitimacy derives from three possible bases: “1. Rational grounds, resting on a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands. 2. Traditional grounds, resting on an established belief in the sanctity of immemorial traditions and the legitimacy of those exercising authority under them. 3. Charismatic grounds, resting on devotion to the exceptional sanctity, heroism or exemplary character of an individual person” (Weber 1968: 215). Finally, an example of the politological interpretation of legitimacy from the work of Jürgen Habermas, who in examining it assumes that “only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted” (Habermas 1996, 110).

A problem, however, lies in the fact that the subject of all the sciences mentioned differs from the subject of public policy theory. Whilst with other sciences it is concerned with legitimacy of origin, legitimacy of power, legitimacy of law, etc., the subject of public policy theory, the aspect of legitimacy in which we are interested, is public interest. At the same time, the theory of public policy as a new scientific discipline of non-normative, theoretical–explanatory, and empirical–analytical character, occupying a place in the space of political sciences between normative political science and empirically oriented political sociology, is characterized by the multidisciplinary of its starting points.

This also applies to its methodology, which uses the achievements of a whole range of social and behavioral sciences, specifically models, in which we can describe empirically observed phenomena. By models, we mean generally conceptual frameworks that enable us to observe phenomena and their holistic relationships. The initial analysis of models of the examined objects provided by the relevant sciences then enter into an interdisciplinary comparison, from which we seek to extract results applicable in the context of public policy theory. In our particular case, we first researched the models of legitimacy in legal, political, and sociological sciences, whilst similarly researching models of understanding of public interests in legal, economic, and political sciences. At the intersection of these two analyses, we chose certain elements by which we sought to create a picture of how the legitimization of public interests occurs in public policy. In doing so, we attempted to create a theoretical background for a whole range of practical policies.

A common problem in practical political decision-making, particularly when political decision-making changes from that among political elites to decision-making in public policy discourse, is the problem of evaluating how political interests are presented legitimately, particularly in the context of confrontation.

Legitimacy

From the three terms we have used in the title of this study, we will first try to deal with the term *legitimacy*.

The leading field that makes the greatest claim to the home competence of legitimacy lying in its subject is the law, i.e., legal sciences. This is quite natural, since the original meaning of this word is connected with the law, with legislation, although the origin of this word is apparently *legum timere* in Latin, which means “to fear the law.”

Naturally, the law is primarily about the *legitimacy of laws*, in other words, the transfer of power (will) from its source, which was a supernatural authority in the past, but which, since the emergence of the modern state, has been the dictum of the numerous constitutions of the democratic states of people (however also citizens, nations, etc.). When addressing the issue of the legitimacy of laws, it is above all a question of whether this transport is performed legally, i.e., in accordance with applicable laws, thus making legal texts legitimized by legality. This transport process is currently monistically analyzed: the law excludes the possibility of simultaneous variants of the legitimacy of a legal standard, because the law itself is dominantly monistic. Legal dualism, which occurs sporadically (and typically the character of two horizontally parallel valid legal standards, in the case, for example, of the successor states that arose after World War I across the boundaries of the original state bodies) is not usually the result of the possibility of two or more parallel sources of power, since the sovereignty of the state is indivisible in the Hobbs tradition of legal science, and cases of legal dualism can be greatly attributed to the imperfection of law-making.

This applies to the field of the legitimacy of the law and legislation (possibly judicial institutions, etc.), but also largely addresses the issue of legitimacy in other disciplines, for example philosophy, especially in political philosophy, as well as throughout mainstream political science in the forefront with politology. Legitimacy has traditionally been associated with legality (but already interpreted as the reconciliation of governance with the normative principles of a given society), with the acceptance of the political order or specific decisions of political authorities by society (Beetham 1991). In politology – especially in its newer, so-called pluralistic approaches – we are more likely to address the issue of the *legitimacy of power*. The view of the legitimacy of power, however, in relation to the new term of the so-called democratic legitimacy of power, changes, whilst also changing the overall understanding of politics into a wider, more inclusive, closer term of *policy*, or *public policy*. This is also related to a different view of the legitimacy of power derived from the electoral cycle, already considered to be inadequate, which, at the same time, goes beyond the limits of the legitimacy of power transmission in political science. The term of the democratic legitimation as presented by Pierre Rosanvallon (and which follows the older term of Robert E. Goodin’s reflexive democracy, and possibly Jacques Maritain’s personalist democracy with his term of collective entities) is based on:

- impartiality, distinct from ordinary political interests, non-particular in its solutions, striving to maximally implement the broad (and longer-term – see Potůček, 2005) interests of society;

- reflexivity as the ability to reflect in the policy of the needs of special and minority groups, views of experts and independent thinkers;
- proximity, i.e., the immediate contact and directing of the citizen and his/her needs, the perception of society not as a homogeneous mass of people but as a spectrum of different interests to be addressed (Rosanvallon 2010).

The asset of the concept of democratic legitimacy appears to be significant in the context of overcoming the idea of indivisibility, since it ceases to apply in the environment of a modern pluralist state – not only in the complex environment of the state, but also in what is already reflected in the legal literature as the multicentrism of the law. The hierarchical arrangement of political systems occurs where there is the vertical confrontation of two legitimate powers, for example in the form of the relationship between the legitimacy of the primary political system (for example, at the level of a Member State of the European Union) and the legitimacy of the secondary political system (at the level of the European Union and its bodies). Solutions to the vertical duality of legitimacy are, according to our view, possible within the framework of the tools of political systems.

It is certainly possible to apply the term of input and output legitimacy. Fritz W. Scharpf presented the view that democratic legitimacy is a two-dimensional term which, in the spirit of Easton's approach from the 1960's (Easton 1965), covers both the inputs and outputs of the political system. On the input side, democratic legitimacy requires mechanisms or procedures to connect policy decisions with the preferences (interests) of citizens. On the other side, Scharpf asserts, that democracy would be an "empty ritual" if the democratic process were not able to produce effective results, that is to say, "to achieve the goals that the actors collectively seek" (Scharpf 1997, 19). The input legitimacy increases if more people can participate in this decision-making process. Forms of input legitimacy are also reflected in referenda, petitions, gatherings of citizens, and other forms of direct democracy. Output legitimacy deals with verifying whether the adopted political solutions are effective in addressing the challenges faced by people. The output legitimacy increases when policy decisions meet the needs of multiple addressees in society. This is the type of legitimacy politicians calculate when they attest that if a government decision is beneficial to more people, this result is more legitimate.

With any power, we can examine two aspects of duality or – in a certain sense of the word – the bivalency, i.e., the duality of legitimacy of power as the legitimacy of input and output.

Finally, these political science approaches also follow the situation in the theory of public policy, where it is the *legitimacy of interests*, which are *ex definitio* pluralistic and even pluralistically legitimate, especially at the level of input legitimacy.

Public Interest

Although this term and the declaration of the subject of its interest makes public law preferential, in the literature we encounter its definition within the legal sciences, economics, sociology, political science, philosophy, urbanism theory, etc. As a result of

the activities of all these sciences, the term of interest is associated with innumerable attributes.

In legal sciences and in legal literature, we often encounter the statement that it is a so-called legally uncertain term, which does not prevent it from being included in an entire range of legislation throughout the law-making world. Its interpretation is generally entrusted to the jurisdiction of courts and to the area of their legal reasoning and appraisal, which, in view of the circumstances of the case, is either public interest or not. With the presence of a couple of terms, public interest – private interest is already encountered in Roman law, in which the clear division of the right to private law emerges for the first time (maintained to this day), advocating the interests of individuals, i.e., defending interests that are referred to as private interests. This runs in parallel to public law, which takes into consideration public interests, the benefit of the public, the state, and society. The Law of the Twelve Tables contained the principles of public interest (*utilitas publica*) in 450 BCE, limiting private interest even at this early stage.

In economic sciences, the approaches to this term can be divided into two opposing camps: the Libertarian wing sometimes denies the possibility of creating anything such as public interest, and claims that all economic interests are only individual interests. *Ex principio* non-collective James M. Buchanan (1975) also adopted the view that public interest as a social phenomenon does not really exist, its theoretical reflection is fiction, and the state's activity in its implementation is a mistake. Neoclassic economic theory reversed the term of so-called Pareto's optimism, established on the premise that public interest is based on increasing the well-being of an individual without harming the interest of another subject, while the utilitarian term (J. Bentham, J. St. Mill) suggests that public interest is beneficial for as many subjects as possible (and so at least potentially also against an individual's interest).

In politology and other mainstream disciplines of political science, the issue of public interest has also evolved. For French encyclopedists, for example, public interest was the interest of ordinary people. According to J. J. Rousseau it is an expression of universal will, superior to the interest of the individual, or all citizens, should every one of them act selflessly. However, in practice individuals do not act selflessly, and, in accordance with general will, there is no such thing as public interest (Heywood 2002, 69). For American federalists, public interest has acted as a "common good" or "general well-being": public interest was expressed and shared across all segments of society as the lowest common denominator. Those interests where at least one segment (the actor) vetoes cannot be considered to be public interest. Liberal political philosophy is based on the fact that public interest consists of individuals' preferences as the basis of their value, and public interest is presented as the sum or average of individual interests. Thus, public interest exceeds individual interests.

In the current political science literature, the general term of *public interest* is given only marginal attention, while the scepter has been taken by theories of public policy in the field of public policy.

Public Policy

Public policy, or its theory, is a relatively new science, the founder of which is considered to be Harold D. Lasswell (1951), mentioned by a range of authors today. It developed within the empirical and pluralistic stream of political science, or political sciences, from which it differs, among other things, from its own subject of investigation. Unlike politology, it is: less concerned with the issue of power and more with issues of interest (especially public interests); less dedicated to the issues of the (political) elite and more dedicated to different actors (not only actors from the environment of the political system, which also deals with political science, but with actors from other subsystems of the state, as well as actors from the market or civil society); less dedicated to conflict and more to consensus; less dedicated to competition and more to partnership; and less dedicated to management and more to administration (Potůček 2003, 15). From the environment of political science, it is also oriented toward interests (both political and public), and finally the issue of how these interests can be understood in their own methodological context, filled with more empirical and less normative content than other political sciences.

The resulting fact is that, of the three English-language terms used by political scientists in this area (*polity*, *policy*, and *politics*), public policy most often overlaps with the notion of polity; although currently, in relation to the term *political*, a broader content and, mainly, inclusive delimiting (Rosanvallon) can restore a discussion on the adequacy of this overlap. Rosanvallon is actually following Carl Schmitt with the use of this term, who in 1927 had already written (*Der Begriff des Politischen*) that “the state as the bearer of political unity, the state as the most extraordinary of all monopolies, the monopoly of political decision-making, this great creation of European form and Western rationalism, is deprived of thrones” (Schmitt 2007, 10).

Public Interest in Public Policy

One could expect that when the law, economic theory, or politology fails to answer the question of how to define the content of public interest, it will do so in the context of defining its subject with public policy. But that is not the case. However, public policy, by building on the achievements of political science, especially the concept of democratic legitimization and input-output legitimization (as I will present later), focuses its attention on the analysis of how the input is collectivized and how the output of the interests is collectivized.

The input collectivization of interests can thus be identified as the collectivization of individual interests into group interests. We can distinguish the following at the individual level:

- personal interests, directly related to the psychophysical being of an individual (age, health, health restriction, handicap, etc.). Thus personal interest obviously demonstrates the greatest connection to the personal needs of the individual, to the fundamental interests of humans, concerning their life, body, and health;

- private interests, which are also closely related to an individual. Their connection to an individual is usually strongly dependent on the subject (ownership, power), but the subject of this interest is hypothetically withdrawable – also their advocacy or enforcement is a question of private benefit (the primary individual), and the individual's practical priorities;
- other individual interests, which an individual acquires and loses during his/her life, to which he/she has a greater but sometimes even small, weak, and transient affinity. These may, on the other hand, even fully occupy the individual's personality at a certain moment, yet at the same time remain the subject of their privacy; they do not have to communicate them and they are not as easily identifiable as personal ("not seeing them") or private (they are not so obviously materializable) interests, and they become "visible" only when the individual outwardly manifests them. They can be collectivized into structures that act as different group interests, and do not relate to basic life or practical priority interests.

In the process of the articulation, manifestation, and aggregation of individual interests, there are different forms or types of first-degree collectivized interests:

- personal interests are often only latently collectivized, but the same interest is associated with all the given personal interests of the same type because they are the same. Personal interests thus join (collectivize) into the form of equal interests that cannot but be outwardly manifested and declared. We all want to live and we do not need to declare or manifest it – and each one of us wants it in principle as well;
- private interests very often feature at the level of individuals as their economic interests. Herein lies Pareto's optimum, which is sometimes mistakenly considered a criterion of public interest – upon joining private interests, common interest is based on increasing the private benefit of an individual without harming the private interest of another subject. Common interest does not mean the same interest as the objective that all interested individuals want to cooperate for, but a collective set of goals they want to achieve individually through a collectivized activity. More precisely, the common interest expresses the penetration of private interests, which must (though varyingly) include all the manifestations of the private interests of the individuals;
- other group interests that join all other (essentially less internalized) individual interests that create a context for equal and common interests, as long as they include a circle of people with related interests (but lacking a link to such personality traits, associated with equal or common interests), sometimes presented as the interests of "friends." In terms of their bearers, the structure of these group interests can be highly varied, as these interests are variable among their bearers; but it is also possible to identify these interests at both the grademaker individual and the collectivized (group) level.

With such collective interests – especially with the collectivized interests of equal and common ones – there is no doubt about their legitimacy, which we could (by applying the F.W. Scharpf approach) also call input legitimacy, which is a necessary but insuf-

ficient condition for us to consider these “first-degree” collectivized interests as public interests.

Legitimization of Public Interest

Public interests can, in principle, arise through the direct integration of individual interests (e.g., in elections and their outcome in the form of parliamentary mechanisms) – at least this is what we see at first glance, although in fact there is a certain first-degree interest collectivization of various electoral structures. Even here, however, we can distinguish between input (electoral systems in a different way of collectivizing voters) and output, which can be considered as a continuation of the monistic line of legitimacy of one type of public interest, at the state level, for example.

However, they can also be mediated by a further (“second-degree,” “output”) collectivization of equal, common, or group interests. The decisive criterion is that their public character goes beyond the framework given by the collectivization of personal or private interests, i.e., representing something “more” as only personal, private, or other individual interests. Once more, the terminology of F.W. Scharpf says that the legitimacy of first-degree legitimacy of supra-individual interests could be considered public; their legitimation must be “external,” legitimizing the output by the public, unrelated (impartial) in relation to the given first-degree collectivized personal or private interest. There is also the bearer of public interest, who is not a group but always the public, as an entity, superior to any particular (individual, equal, collective or other group) interest.

The term *public* is equally still a certain long public policy theory; even if we could find its roots in the Roman *populus*, as the sum of Roman citizens (patricians and plebeians), or about two thousand years later in John Dewey’s *The Public and Its Problem* monograph. It cannot be forgotten in this context that the theory of public policy is actually returning to its original, most authentic, roots, as it has now almost been lost that its founder, Harold D. Lasswell, intensively addressed the problem of defining the public and its action by studying Dewey’s works from the 1920s (Torgerson 2007). In any case, however, the public is internally a vertically and horizontally structured reality, so it is possible to speak of an entire set of differently defined publics, but still characterized by their basic characteristics of control over power and elites. The possibility of publicizing the output of legitimizing group interests as a public interest assumes the identification of the public concerned by the given interest: not directly (as is the case for group interests) but non-particularly, yet reflectively and immediately, as is clear from the principles of democratic legitimacy.

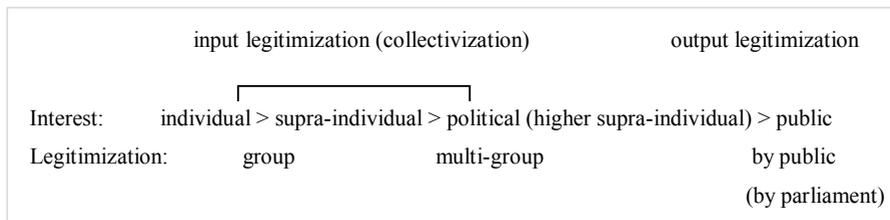


Figure 1: Basic diagram of the transformation of interests and the process of their legitimization

Source: own elaboration

Conclusion

1. The analysis demonstrates that the notion of legitimacy occurs within the context of various subjects (legitimacy of law, legitimacy of power, legitimacy of interests) and thus in the context of different sciences that deviate in this subject, different content, and different characteristics. In general, we could discuss monistic legitimacy (where legitimization is non-alternative), the legitimacy of dualism, and the legitimacy of pluralism, where there may be several legitimities in vertical, horizontal, but otherwise legitimate relations, several legitimate phenomena that cannot be considered neither mutually superior nor inferior.
2. The legitimacy of public interests (as examined by public policy theory) can be fully plural. In public policy, it is not a rarity that we deal in the same space at the same time with a plurality of interests that are not only *ex definitio* public, but also entitled to qualify their legitimacy.
3. As far as interests, specifically public interests, we can distinguish – applying the concept of F. W. Scharpf – input legitimacy and output legitimacy, while input legitimization occurs at the level of the group (which is the bearer), and output legitimization is performed by a legitimizing authority, which is public, directly connected with the interest, but legitimizing it in its acceptance.

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Viešųjų interesų teisėtumas viešojoje politikoje

Anotacija

Įvairiuose mokslo srityse terminas *teisėtumas* vartojamas skirtingomis reikšmėmis, tačiau praktiškai tai yra įstatymo teisėtumas, politologijoje – valdžios teisėtumas ir pan. Taip pat sąvoka *interesas*, tiksliau *viešasis interesas*, interpretuojama skirtingai skirtinguose mokslo srityse (teisėje, ekonomikoje, politologijoje ir t. t.). Pasirodo, kad viešosios politikos teorijoje yra produktyvu suprasti P. Rosanvallon'o demokratinį teisėtumą bei F. W. Scharpf'o teisėtumo įvedimą (*input*) ir išvedimą (*output*), kuo paskui grindžiamas

skirstymas į įvedamą teisėtumą, t. y. grupių interesų teisėtumą, ir išvedamą teisėtumą, t. y. visuomenės įteisintų interesų teisėtumą.

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