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TOWARD AN AUTONOMOUS CONCEPTION OF LEGITIMACY IN GENERAL LEGAL THEORY

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The article examines legitimacy as an independent fundamental category of general legal theory. It is established that the traditional attributive understanding of legitimacy as a characteristic of other legal objects such as law, power, or state institutions is methodologically insufficient, as it ignores the intrinsic conceptual potential of this notion. The article traces the evolution of the concept from ancient Greek philosophy through medieval legal thought to the social contract theorists and contemporary normative-value theories. The analysis reveals that ancient thinkers, while not using the term 'legitimacy' explicitly, laid three foundational vectors that continue to define its content: the connection of law to higher justice, orientation toward the common good, and the requirement of positive law to conform to objective rational principles. Medieval doctrine, primarily through Thomas Aquinas, contributed the critical distinction between legality (formal lawfulness) and legitimacy (substantive conformity to higher values). The social contract tradition transformed legitimacy from a static correspondence to a higher order into a dynamic parameter measuring the degree to which state power meets citizens' expectations. The article provides a critical analysis of Max Weber's descriptive-sociological approach, identifying two principal shortcomings: the risk of legitimizing authoritarian regimes that enjoy mass support regardless of their substantive injustice, and the inability of formal legalism to critically evaluate the justice of the very procedures it follows. Significant contradictions between leading contemporary theorists are identified: between Habermas's real discourse model and Rawls's hypothetical consent behind the veil of ignorance; between Dworkin's interpretive theory grounding legitimacy in equal concern and respect, and Raz's service conception tying authority to its practical value for those subject to it. Three attributes of legitimacy's ontological autonomy are substantiated: its ontological self-sufficiency (illustrated by the 'inertia of legitimacy' phenomenon), its unique integrative function (transforming external coercive demands into voluntary compliance), and its axiological independence from the effectiveness of the legal order (illustrated by the case of an 'efficient but illegitimate regime'). The significance of the legitimacy category is actualized in the context of contemporary Ukrainian legal challenges, including the limits of state coercion under martial law, the legal status of acts issued under occupation, and the reconstruction of institutional trust in post-war recovery. The article argues for the necessity of treating legitimacy as an autonomous category uniting social recognition with normative justification, which may serve as an internal criterion of legal quality that distinguishes formal validity from substantive lawfulness.

Keywords: lawfulness; rule of law; social contract; legal consciousness; normative justification.

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Introduction. Legitimacy stands as a fundamental legal category, the genesis of which encompasses a lengthy and complex historical-theoretical path of formation.

Analysis of the scholarly heritage of the past allows us to assert that a significant number of thinkers, even without using the term 'legitimacy' explicitly, effectively directed their research toward understanding precisely this concept. In contemporary legal discourse, this notion has achieved extraordinary prevalence, yet it remains the subject of numerous debates and lacks a uniform interpretation not only in the interdisciplinary dimension but also within jurisprudence itself. Traditionally, doctrine has analyzed legitimacy primarily as an attributive characteristic of other objects – through the 'legitimacy of law,' the 'legitimacy of power,' or the 'legitimacy of state institutions' – which frequently leads to a neglect of the essence of the concept of legitimacy itself.

Problem Statement. In our view, legitimacy possesses autonomous content and constitutes an independent category of general legal theory that requires separate conceptual delineation. Moreover, legitimacy stands as a fundamental legal category insofar as it is embedded directly in the foundations of law. Any legal system can be effective only on condition of its legitimacy, since it is from this recognition that the real effectiveness of legal norms flows. Legitimacy is the source of public trust in the state and stands as the basic condition for the realization of the social contract. At the same time, it presents itself as a foundational axiological (value-laden) characteristic, disclosed through the prism of compliance with fundamental principles: justice, human rights, equality before the law, and the rule of law. In other words, a legal order is legitimate only when it conforms to these fundamental principles. With this in mind, legitimacy should be regarded as the most comprehensive and vital category in legal science, one that allows the delimitation of the substantive boundaries and the specific functioning of the entire body of legal matter.

Analysis of Recent Research and Publications. The problematic of legitimacy lies at the intersection of jurisprudence, political philosophy, and sociology. In foreign scholarship, significant contributions to the development of this category have been made by M. Weber [1], H. Kelsen [2], L. Fuller [3], J. Habermas [4], J. Rawls [5], R. Dworkin [6], and J. Raz [7]. The origins of the concept reach back to ancient philosophy – the works of Plato [8], Aristotle [9], and Cicero [10]. The medieval tradition is represented above all by the teaching of Thomas Aquinas [11], while the theory of the social contract is found in the works of T. Hobbes [12], J. Locke [13], and J.-J. Rousseau [14]. Despite the broad interdisciplinary interest in the topic, within Ukrainian legal doctrine legitimacy has not yet been conceptualized as an independent category of general legal theory, which is precisely what makes this study timely.

Objectives of the Article. The aim of this work is to systematize the approaches of various thinkers and scholars to defining legitimacy from the origins of its conceptualization through to contemporary theories, so as to delineate the substantive boundaries and the specific functioning of this category in legal science; to lay the conceptual foundations for an autonomous conception of legitimacy in general legal theory; and to ascertain its place within the system of legal categories.

Main Body. Research into the genesis of legitimacy requires, first of all, an important methodological caveat: within the ancient intellectual tradition, the category of 'legitimacy' in its contemporary terminological sense was not used. Etymologically, the concept has Latin origins, yet the conceptual apparatus of Greek and Roman thinkers was deeply rooted in the search for metaphysical and rational foundations for a 'correct' social order. The question of the rightfulness of power and law was considered through the prism of the categories of justice (dikaiosyne), nature (physis), and law (nomos). Thus, in the philosophical legacy of Plato, the question of legitimacy is effectively transformed into the problem of the conformity of state power to the ideal of justice and true

knowledge [8]. For Plato, only that order is legitimate which reflects cosmic harmony and is governed by 'philosopher-rulers' who have access to the contemplation of the Ideas. Aristotle, by contrast, shifted the discourse into the plane of political analysis, linking the rightfulness of governance with the category of the common good [9]. In his understanding, legitimacy serves as the criterion of demarcation between the correct forms of political organization (monarchy, aristocracy, polity) and their corrupted analogues (tyranny, oligarchy, ochlocracy). A special place in this process is occupied by the writings of Cicero, who laid the foundations for understanding legitimacy through the concept of natural law (lex vera) [10].

The transition to medieval political-legal thought marked a shift in the understanding of legitimacy from anthropocentric rationalism to theocentric objectivism. The key figure of this stage was Thomas Aquinas, who, in his hierarchical system of laws, singled out 'natural law' (lex naturalis) as the standard for human enactments [11]. His fundamental thesis – that an unjust law is merely a 'perversion of law' (corruptio legis) – laid the theoretical foundation for distinguishing between legality and legitimacy.

The early modern era marked a radical anthropocentric turn in the understanding of the nature of legal order. The social contract theory came to occupy a central place in this discourse. Whereas for Hobbes legitimacy was derivative of the sovereign's capacity to guarantee security [12], in the writings of Locke it was directly linked to the protection of the inalienable natural rights of the person [13]. Rousseau, for his part, saw the source of legitimacy in the 'general will,' transforming the recognition of the legal order into an act of active civic participation [14].

The formation of the modern doctrine of legitimacy is inextricably linked to the contribution of Max Weber, who proposed a descriptive-sociological approach. For Weber, legitimacy presents itself not as a moral requirement but as a concrete social fact – the subjective belief of individuals in the rightfulness of the existing domination [1]. Distinguishing three types of legitimate domination (traditional, charismatic, and rational-legal), Weber regarded the last of these as definitive of the modern state.

Despite the fundamental significance of the Weberian model, its 'procedural formalism' proves fundamentally insufficient for legal science for several reasons. First, the Weberian conception reduces legitimacy to an empirical fact of subjective recognition, stripping it of normative content. This produces a dangerous consequence: if a particular legal order enjoys the mass 'belief' of its subjects, it automatically acquires legitimacy – regardless of whether it conforms to the principles of justice and human rights. This limitation manifests clearly in the analysis of authoritarian regimes that rested on broad public support yet remained deeply illegitimate from the standpoint of law. Second, the equation of legitimacy with legality within the framework of rational-legal domination deprives law of an instrument of internal criticism. If everything adopted in accordance with established procedures is legitimate, then law loses its capacity to evaluate the justice of those very procedures.

The sharp debates in legal thought of the twentieth and twenty-first centuries revealed significant contradictions between different approaches to justifying legitimacy. Hans Kelsen attempted to distinguish legitimacy from effectiveness through the concept of the 'basic norm' (Grundnorm) [2], but in so doing remained within the bounds of normative formalism: the Grundnorm is a conditional postulate, not a value-based justification of the legal order. Lon Fuller took a step forward by emphasizing the 'inner morality of law' [3]: legitimacy is impossible without principles that make law comprehensible and predictable. However, Fuller's critics – notably Herbert Hart – pointed out that compliance with formal requirements of clarity does not guarantee the

justice of the content of norms. Jürgen Habermas developed the idea of legitimacy through communicative action: a legal order is legitimate only when its norms are the product of rational discourse among free citizens [4]. Unlike Weber, for whom legitimacy is a fact, for Habermas it is a discursive procedure. Yet an ideal coercion-free discourse remains a normative utopia. John Rawls, for his part, grounded legitimacy in principles of justice that rational agents could endorse from behind a 'veil of ignorance' [5]. Rawls's approach differs substantially from Habermas's: whereas the latter emphasizes actual discourse between concrete participants, Rawls appeals to the hypothetical consent of abstract subjects. Ronald Dworkin transforms legitimacy into the moral justification of state coercion through the duty of power to treat citizens with 'equal concern and respect' [6]. Joseph Raz, by contrast, proposes a 'service conception' of authority, wherein the legitimacy of power depends on its capacity to help subjects better comply with the demands of reason [7] – an approach that challenges Dworkin's appeal to moral interpretation, since for Raz authority is justified only when it has genuine practical value for those subject to it.

The theoretical significance of legitimacy acquires a particular dimension in the context of contemporary Ukraine. The full-scale armed aggression of Russia in 2022 has posed a series of acute questions for Ukrainian legal science, directly connected to this category. First, martial law inevitably restricts constitutionally guaranteed rights, raising questions about the boundaries between legitimate and illegitimate state coercion under conditions of emergency. Second, the question of legitimacy directly concerns the legal status of decisions adopted in temporarily occupied territories: acts of the occupation administration may bear the features of formal legality yet are illegitimate, as they do not correspond to the will of the people or the principles of international law. Third, the reconstruction of post-war Ukraine will require rebuilding the legitimacy of legal institutions in the civic consciousness of citizens, overcoming legal nihilism, and restoring trust in the state. Thus, Ukrainian realities confirm: legitimacy is no abstract theoretical construct but a living category, upon the condition of which the effectiveness of the entire legal order depends.

The analysis allows us to state that this category has long been considered primarily through the prism of an interdisciplinary approach. Overcoming the purely attributive understanding of legitimacy requires its conceptualization as an autonomous category possessing its own substantive core. The necessity of such delineation is conditioned by a number of attributes. First, legitimacy possesses ontological self-sufficiency: striking confirmation of this is the phenomenon of the 'inertia of legitimacy,' whereby a given institution physically ceases to exist, yet its legitimacy is preserved in the social consciousness. Second, it performs a unique integrative function: it ensures the internalization of the social order, transforming the external demands of power into the individual's voluntary readiness to act in accordance with them. Third, legitimacy possesses axiological autonomy. The best illustration is the situation of an 'effective but wrongful order': a state regime may ensure welfare and security, yet if it systematically violates human rights it faces a crisis of legitimacy that no material achievements can overcome.

Although legitimacy may exist as a social fact, its legal autonomy is revealed in the gap between the formal validity of a law and its substantive lawfulness. Law gives legitimacy a specific form of existence through institutions and procedures, yet legitimacy itself remains an independent 'controller' of those institutions. It allows us to distinguish law as the command of power from law as the embodiment of justice. It is precisely this ontological dualism – the possibility of something being 'lawful but

illegitimate' or 'legitimate but not formally enshrined' – that constitutes the fundamental problem of legal theory.

Conclusions. The historical-theoretical analysis conducted suggests the necessity of conceptualizing legitimacy as an autonomous category that cannot be reduced exclusively to an attributive characteristic of power or law, nor to a mere sociological fact of subjects' belief in the rightfulness of domination. In the legal dimension, legitimacy presents itself as an autonomous category that combines the element of social recognition with the normative justification of the legal order. It is an internal criterion of the quality of law, which allows us to distinguish the formal validity of a statute from its substantive lawfulness. It is precisely through the category of legitimacy that legal science obtains an instrument for evaluating the limits of permissible state coercion and for determining the conformity of the legal order to the fundamental principles of justice, human rights, and the rule of law. The experience of Ukraine under armed aggression confirms: legitimacy is the key condition for the survival and restoration of the legal order. In this sense, legitimacy occupies a system-forming place in the structure of general theoretical legal categories.

Prospects for further research are seen in the development of an original definition of legitimacy as a legal category, in the study of mechanisms for measuring the legitimacy of legal acts in constitutional adjudication practice, and in a comparative analysis of approaches to legitimacy in the legal systems of states that have survived armed conflicts.

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ДО ПИТАННЯ ПРО АВТОНОМНУ КОНЦЕПЦІЮ ЛЕГІТИМНОСТІ В ЗАГАЛЬНОТЕОРЕТИЧНОМУ ПРАВОЗНАВСТВІ

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Анотація. Досліджено легітимність як самостійну фундаментальну категорію загальнотеоретичного правознавства. Встановлено, що традиційне атрибутивне розуміння легітимності як характеристики інших правових об'єктів: права, влади чи державних інститутів є методологічно недостатнім, оскільки ігнорує власний змістовний потенціал цього поняття. Простежено еволюцію концепту від античної філософії через середньовічну правову думку до теоретиків суспільного договору та сучасних нормативно-ціннісних концепцій. Виявлено, що давні мислителі, не використовуючи термін «легітимність», явно заклали три засновничі вектори, які й досі визначають її зміст: зв'язок права з вищою справедливістю, орієнтація на спільне благо і вимога відповідності позитивного права об'єктивним раціональним принципам. Середньовічна доктрина, насамперед через вчення Томи Аквінського, внесла принципове розрізнення між легальністю (формальною правомірністю) та легітимністю (змістовною відповідністю вищим цінностям). Традиція суспільного договору перетворила легітимність зі статичної відповідності вищому порядку на динамічний параметр, що вимірює ступінь відповідності державної влади та правової системи очікуванням громадян. Запропоновано критичний аналіз дескриптивно-

соціологічного підходу Макса Вебера, виявлено дві принципові вади: ризик легітимації авторитарних режимів із широкою суспільною підтримкою незалежно від їхньої змістовної несправедливості та неспроможність формального легалізму критично оцінювати справедливість самих процедур. Виявлено суттєві суперечності між провідними сучасними теоретиками: між моделлю реального дискурсу Габермаса та гіпотетичною згодою Ролза «за завісою незнання»; між інтерпретативною теорією Дворкіна, яка обґрунтовує легітимність рівною турботою та повагою до громадян, і «сервісною концепцією» Раза, що пов'язує авторитет із його практичною цінністю для підвладних. Обґрунтовано три ознаки онтологічної автономності легітимності: онтологічна самодостатність (феномен «інертності легітимності», коли інституція фізично припиняє існування, проте її легітимність зберігається у суспільній свідомості), унікальна інтегративна функція (перетворення зовнішніх примусових вимог влади на добровільну готовність індивіда діяти згідно з ними) та аксіологічна незалежність від ефективності правового порядку (ситуація «ефективного, але нелегітимного режиму»). Актуалізовано значення категорії легітимності в контексті сучасних українських правових викликів: межі державного примусу в умовах воєнного стану, правовий статус актів окупаційної адміністрації та реконструкція інституційної довіри в процесі повоєнного відновлення. Зроблено висновок, що легітимність є автономною категорією, яка поєднує соціальне визнання з нормативним обґрунтуванням і слугує внутрішнім критерієм якості права, що дозволяє розрізняти формальну дійсність закону та його змістовну правомірність. У цьому сенсі легітимність займає системоутворювальне місце в структурі загальнотеоретичних юридичних категорій.

Ключові слова: правомірність; верховенство права; суспільний договір; правосвідомість; нормативна обґрунтованість.

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