What is A State?

CCLGT
Introduction

• What Are the Forms of Government?

• What is Separation and Division of Powers/Checks and Balances?
  • *Similarities and Differences in Different Forms of Governments --- The Importance of Comparison and Comparative (Constitutional) Law (CCL)*

• States and Sovereignty – Elements, Recognition, Limits
Forms of Government I – Broad (PoliSci)

**Oligarchy** – this is government ruled by a small group in their own interest

**Dictatorship** – this is an where an individual holds absolute power over the people by force. Such a person is usually termed ‘dictator’. The dictator controls the country through controlling the political parties and the security forces (police and army)

**Totalitarianism** – a system of government which is formed by one political group and does not tolerate opposition

**Democracy** – government which allows citizens to govern themselves through direct or indirect means.
Forms of Government II – Narrow (CCL)

- Based on who is Head of State (HoS)
  - Monarchic
  - Republican

- Source of power (divine/symbolic, electoral, the role of the people?)
- Order of succession (Seniority, Abdication, Elections)
- Legitimacy (direct, indirect, legal, social, political)
Form of Government III – Narrow (CCL)

• Based on who is the Head of Government (3 basic):
  
  • Presidential
    
    • Semi-Presidential
  
  • Parliamentary

• Defines how branches of power interact in checks and balances (fusion of powers?)

• Defines who exercises the executive power? (can be President or PM)
Why Compare?

• Putting the ‘Comparative’ in Comparative Constitutional Law is necessary for a contextual understanding of international affairs in law and politics.

• **Learning** differences and similarities of the different Forms of Government helps understand basic legal and political structures operating in a State (as a framework of exercising public power over the population within the sovereign territory)

• Lessons of a comparison can be important inputs into interstate and international relations (*convergence* of problems and solutions)
Why Compare

• Different cultural and historical traditions, circumstances are meant to be understood (cultural relativism) in any comparison

• “Cross-fertilization” – ideas and models of different institutions need to be observed (patterns of development) – to thoroughly improve domestic legal and political cultures and institutional frameworks

• CCL serves legal and institutional capacity-building (e.g. ENP finances institutional development in EU candidate countries – work usu. based on international models and patterns) – legal competitiveness
States and Sovereignty - Religion

• **Different states apply different Forms of Government** (structures of public power) – *sovereign decision* (based on result of historical development, organic (social change), comparison)

• Origins of States (Sovereignty) – theory influenced by religion (Middle Ages)
  • St. Augustine: state = righteous rule – obedience (divine law)
  • St Thomas of Aquinas: state = community for peace and common welfare (moral order)
States and Sovereignty - Contracts

• **Grotius** (state = union) – appetite for community motivates people

• **Hobbes** (state = subjection) – appetite for violence necessitates “sovereign” subjection to protect people

• **Locke, Rousseau, Montesquieu** (state = ‘constitution’): a construct ‘constituted’ by the people (political space) enabling the ‘sovereign’ to exercise public power
States and Sovereignty - Violence

• “Human community that (successfully) claims the monopoly of the legitimate use of violence within a given territory.” (Max Weber)

• **Monopoly** – no outside interference, no other supreme source of power

• **Violence (over the population)** – a form of public authority (sovereign power)

• **Territory**
Sovereignty – What It Means?

• State vs. National sovereignty – UN Charter - national self-determination – External aspect of sovereignty in IR

• Sovereignty of Law/Legal order: apparent state is sovereign if no other legal order is superimposed – Internal aspects
Sovereignty – Core Elements

• Internally (cf. Weber):
  • Supreme Legal Authority (public power)
  • Territory
  • Population

• Externally (IR – intl law):
  • Recognition of Authority, Territory and Population
  • No interference with Authority
  • Capacity of States to Act Autonomously in IR

• Exceptions??
Limiting Sovereignty

• Internally:
  • By the constitution
  • By national laws
  • By national legal institutions
  • “self-imposed”

•Externally:
  • International Organizations
  • International Commitments
  • International Recognition
  • “superimposed”
Internal Limits

• There is territory
• With a population

• BUT without complete supreme Authority (public power)

• AUTONOMY vs. Sovereignty

• Constitution or Statute limits public power

• Catalonia
• Scotland / UK
• Minorities in certain countries
External Limits – Recognition?

• Recognition of Population (Nation) or Territory (Borders)

• Slovenian-Croatian Border Dispute (Piran, July 2017)

• The Koreas, China-Taiwan, Kosovo, Cyprus-Turkey, Israel

• Autonomy in IR?

• UN-friendly relations?

• Is sovereignty absolute in IR?
External Limits – International influence

• **Direct (imposition) in post-war reconstruction:**
  - Japan – 1945, Bosnia - Annex 4 of the Dayton Agreement, Cambodia, East Timor, Afghanistan (they exercise sovereign competences as allowed)

• **Indirect influence in IR:**
  - Existing treaties/commitments binding the state (oversight by international organizations)
  - Limits sovereignty based on Internal Autonomous Decision
Questions for Self-Check (Forms of Government)

• How can you describe the broad (polisci) interpretation of Forms of Government?
• What types of narrow (legal) interpretations are there?
• What defines who exercises executive power?
• What types of Forms of Government you know based on who is the Head of State?
• A directly or indirectly elected Head of State has greater political and social legitimacy?
Questions for Self-Check (Sovereignty)

• What types of contract theories you know? Who thought of them?
• What are the 3+1 core elements of sovereignty?
• How can you differentiate between the internal and external aspects of sovereignty? Among these what can be self-imposed and superimposed limitations?
• What is the difference between autonomy and sovereignty?
• What historical examples do you know regarding limitation of sovereign power through direct external imposition?
Resources

• Reading Items 1-3:
  
  • *The Element of Sovereignty*
  
  • *States as Actors in International Cooperation*
  
  • *States and Globalization*
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