

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 a 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)

Forms of Government

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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