

W201 The Individual and the State

Study notes on Legitimacy

This is a concept which has featured in some academic writings from 1970 onwards.

Note that 'legitimacy' does not feature in decided cases.

Because it is in the Manual you may be examined on it.

'Legitimacy' involves the relationship of the government and the governed. It is really an extension of the idea we have already seen in Locke that 'the people have a right to act as supreme'. It is said for example that a new government (perhaps after a revolution) may seek approval from the people for a constitution to give the government authority and 'legitimacy'.

A government in this situation could ignore both the need for a constitution and the consent of the governed and govern through fear. However it is often easier to govern through consent which is more easily obtained if the people accept their government has 'legitimacy'.

'Legitimacy' in this sense is distinguished from legality.

A government may retain 'legitimacy' if it retains the consent of the governed even if it undertakes individual acts which are illegal.

A government on the other hand may not have 'legitimacy' even it obeys every rule in the book - if it does not have the consent of the governed.

It is open to debate whether this concept adds anything to our understanding of constitutional law but if it is raised in an exam question you must be ready to define the use of the word by referring to Beetham (an academic) who sees three levels of 'legitimacy'

- i) conformity to established rules by government
- ii) shared beliefs of both governed and government
- iii) consent of the governed

and who describes 'legitimacy' as "the moral aspect of power relationships".

In a liberal democracy elected representative government is a mechanism which may help to achieve legitimacy but clearly no election can guarantee that the actions of the government will remain legitimate subsequently.