

The Interplay of Sustainability, Constitutionalism and Legitimacy: Examining the “Political Ecotopia” as a manifestation of Social Sustainability and a Pillar of Constitutionalism

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Abstract

The three main pillars of sustainability are environment, economy, and society. Society, as a component of sustainability, represents a category that is particularly difficult to explain and analyze. This category encompasses a range of values, ideas, and concepts that are widely accepted and desired. Among these, the concepts of constitutionalism and legitimacy are key legal and political constructs that underpin social sustainability. Conversely, legitimacy is a crucial element that ensures the sustainability of constitutionalism. This paper will explore several key questions: Is legitimacy a conditio sine qua non for constitutionalism? Is legitimacy a dynamic and sustainable category? Does legitimacy embody a value that is inherently desirable and beneficial? The study will further examine whether maintaining legitimacy incurs costs and if it is necessary to invest in sustaining this dynamic category. Finally, the paper will discuss whether the idea of legitimacy, as a sustainable resource for constitutionalism, is a necessity or merely a political "ecotopia."

Keywords: social sustainability, constitutionalism, legitimacy, sustainability, the right to rule, limited government, political system.

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1. Introduction

Sustainability is a normative concept based on what people value or find desirable. Its three main pillars are the environment, economy, and society. Unlike the

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environment and economy, society as a component of sustainability is much more difficult to understand. It is diffuse and encompasses many concepts, ideas, and values that are considered desirable and valued.

Social sustainability is a dynamic and complex field within the overall framework of sustainability. Achieving social sustainability requires significant dedication, persistence, and effort in adhering to principles, processes, and concepts, often involving meta-legal values and utopian ideals. This task is challenging due to the vast number of fluctuating elements and the variability of the values associated with their fulfillment or non-fulfillment. Nevertheless, the primary objective of these elements within the concept of social sustainability is to ensure a dignified life for the fundamental building block of society—the human being.

Social sustainability involves identifying and managing the positive and negative impacts of political systems, processes, organizations, and activities on people and society. The main objective is to meet people's needs (both environmental and socio-cultural) in an equitable manner. This social aspect of sustainability is crucial because it aims to improve both the social and natural environment for people. It encompasses several important ideals, values, concepts, and principles, including human rights, health and social equity, social responsibility, and justice. Among these is the principle of constitutionalism, which necessitates a government that is limited and controlled. This broad concept inherently includes the idea of legitimacy.

Having in mind the features of sustainability, one bold idea of social component of sustainability is the *legitimacy as sustainable resource of constitutionalism*.

The concept of legitimacy is a *conditio sine qua non* for constitutionalism. It is a fundamental element of constitutionalism, which is based on the idea of limited power. As M.J.C. Vile stated, “Freedom ordains rules. Government is lost liberty.”³ This paradox has challenged Western theories on constitutionalism since the earliest times. The idea that all governmental power, no matter how democratic, should be limited and controlled is in the essence of the constitutionalism. This doctrine of limited government regards governments as a threat to liberty. Its protection is in keeping governments confined within, as Joseph Raz wrote, proper moral bounds.

2. The definition of the constitutionalism

The “constitutionalism” is one of those commonly used concepts, with more connotations and without clear definition for any of them. The remark of many scholars is that “without a clear definition, the term ‘constitutionalism’ is an invitation to debate about ghosts or, to shift the metaphor, to enter a trackless verbal swamp”⁴; and also, that “constitutionalism is one of those concepts, evocative and persuasive in its connotations yet cloudy in its analytic and descriptive content, which at once enrich and confuse political discourse”⁵. In contemporary world, the terms populist constitutionalism) and

³ M.J.C. Vile, *Constitutionalism and the Separation of Powers*, Oxford, 1967, Preface, p. V.

⁴ Walter Murphy, *Constitutions, Constitutionalism and Democracy*, in D. Greenberg and others (eds.), *Constitutionalism and Democracy*, Oxford: OUP, 1993, pp.3-25.

⁵ Thomas C. Grey, *Constitutionalism: An Analytic Framework*, in J.W. Chapman and J. R. Pennock,

authoritarian constitutionalism add additional confusion in the understanding of the term constitutionalism. “Populist constitutionalism represents the most serious challenge to the post-war liberal international order and its core constitutional form—liberal constitutional democracy”. On the other hand, Poland and Hungary, in the words of Mark Tushnet are promising candidates for the examination of a potentially distinctive form of constitutionalism – authoritarian constitutionalism⁶.

So, when we speak about constitutionalism, many questions appear, as are the following: What does the constitutionalism mean? Does it contain its own essential core, which distinguishes it from the concepts, as are democracy, liberalism, rule of law? What are the relations between the constitutionalism and these notions? Does the constitutionalism have more connotations? Are there different kinds of constitutionalism? Etc.

Traditionally, constitutionalism means limited government, i.e. it expresses the conviction of necessity of limiting state power by legal means. So, most often the constitutionalism is defined *negatively*, as a system of legal limitations of state power. Its opposite in this sense is arbitrary⁷, absolutist, authoritarian or totalitarian government. The negative definition of the constitutionalism is pointed “whenever reflection is focused on abuses of political power, as in the typical account of modern English constitutionalism, which tells the story of the progressive wresting of political power from the hands of an absolute - in principle if not in fact - monarch by more or less representative institution. In the face of these precedents, it is important for us to emphasize that the concept of constitutionalism is two-edged, that it has a positive as well as negative aspect⁸. A constitution both empowers and delimits power, both grants authority and specifies its scope and purpose. Recognition of this duality is especially important in the case of the United States...”⁹.

It should not be forgotten that “[w]ithin any modern state, citizens are structurally related to state authority in three basic ways. Citizens are collectively the sovereign *creators* of state authority, they are potentially *threatened* by state-organized

Constitutionalism, New York, 1979, p. 189.

⁶ Tushnet, Mark. (2013) „Authoritarian Constitutionalism”, *Harvard Public Law Working Paper* No. 13–47 (2013)

⁷ Government is arbitrary if it has any or all of four characteristics: if it gives effect to unconstrained will of the rulers; if it does not treat people consistently; if it is unpredictable; if its actions depart from the reason of the law. So, government is arbitrary if it lacks constraint, consistency, or certainty. See Thimoty A. O. Endicott, “The Impossibility of the Rule of Law”, *Oxford Journal of Legal Studies*, vol. 19, 1999, p. 3.

⁸ Stephen Holmes laments that the metaphors of checking, blocking, and restraining have given a constitutionalism a bad name. He urges that instead, the role of constitutionalism is generating new practices and possibilities, in enabling the electorate to have a coherent will, be considered. See Michael C. Davis, “The Price of Rights: Constitutionalism and East Asian Economic Development”, *Human Rights Quarterly*, vol.20/1998, p. 325. For a recent discussion on “negative” and “enabling” constitutionalism to see: S. Holmes, *Passions and Constraint. On the Theory of Liberal Democracy*, Chicago: University of Chicago, 1995.

⁹ Donald P. Kommers and W.J. Thompson, *Fundamentals in the Liberal Constitutional Tradition*, in Joachim Jens Hesse and Nevil Jonhson (eds.), *Constitutional Policy and Change in Europe*, Oxford: Oxford University Press, 1995, p. 23-24.

force and coercion, and they are *dependent upon the services and provisions organized by the state*¹⁰.

That means that the idea of constitutionalism is neutral vis-à-vis the amount of power and to limit the power does not mean to minimize it. The criterion to determine whether a government is constitutional or not is not the amount of power but its quality. Who exercised the power is presupposed question. The basic question for the constitutionalism is *how* the power is exercised.

So, what is the constitutionalism?

It is *idea, ideology and theory* of the limited and controlled power in the same time¹¹.

For Carla M. Zoethout and Piet J. Boon, generally speaking, constitutionalism has two connotations, which are closely connected. On the one hand, constitutionalism is used to indicate the striving for codification of the state's organization. On the other hand, constitutionalism refers to a political ideal regarding the organization of the state¹².

As a political ideal, the constitutionalism refers to the necessity of limiting and controlling political power as means for preservation of human rights and expresses the conviction that the politics should be bound with legal frames. That ideal connects the substantial aspect of constitutionalism (protection of human rights) and its formal aspects (legal limitations - "Power is prescribed and procedures prescribed.")¹³.

Or said in other words, the demands of the constitutionalism are:

- De-politization of decision making;
- Procedural limits on the exercise of power;
- Values in the regulation of citizens and groups in their basic social contacts¹⁴.

According to Carl Friedrich constitutionalism has its philosophical, structural, legal, documentary, procedural and normative meaning. Constitutionalism is based on the principles of law and legal state; so, it is principle or system in which the law rules and human rights are not only highest value, but also they must be guaranteed and protected in institutional manner. It is a system of effective, systematic and institutionalized limitations of the political power which aim is preservation of the human rights.

So, the control of political power is not the only goal of the constitutionalism. Constitutionalism also seeks to make government possible and to provide visions of

¹⁰ Claus Offe, *Democracy Against Welfare State? Structural Foundations of Neoconservative Political Opportunities*, in J. Donald Moon (ed.), *Responsibility, Rights and Welfare: The Theory of Welfare State*, Boulder: Westview Press, 1989, p. 189.

¹¹ Lidija R. Basta, *Politika u granicama prava - Studija o anglosaksonskom konstitucionalizmu*, Beograd: Istraživačko-izdavački centar Ss Srbije i Institut za uporedno pravo, 1984, p.153.

¹² Carla M. Zoethout and Piet J. Boon, *Defining Constitutionalism and Democracy: An Introduction, in Constitutionalism in Africa - A Quest for Autochthonous Principles*, Sanders Institut, 1996, p. 4.

¹³ W. G. Andrews, *Constitutions and Constitutionalism*, Princeton, New Jersey, Toronto, London, New York, 1963, p.13.

¹⁴ J. Morison, *Crisis and Control: A 'New Constitutionalism' for the United Kingdom from Northern Ireland?*, in Carla M. Zoethout, Ger van der Tand and Piet Akkermans (eds.), *Control in Constitutional Law*, Martinus Nijhoff Publishers, p. 3-21.

legitimate and just system for government.

Ulrich Karpen defined constitutionalism as “primarily protecting the individual liberty by representative democracy, separation and division of powers and inviolable rights”¹⁵.

Starting from the fact that there are many definitions of the term constitutionalism we can conclude that its essence could be best described through its elements (benchmarks).

2. The essence (elements) of the constitutionalism

Different authors point out different elements of the constitutionalism¹⁶. But the essence of the constitutionalism could be described through the following benchmarks:

1. *Limited government*. The constitutionalism incorporates in itself demand for government, which will not be voluntary, subjective and arbitrary. “People have one serious enemy, their own government”, said Saint-Just in the debate on the French Constitution of 1791. Because of that government should be limited.

According to Jozeph Raz, two ways of limiting governmental authority are possible. The first limits governments by denying their authority either to act in order to promote any conception of good life, or to act in ways, which help one conception of the good life more than other. The second is through a doctrine of fundamental rights, which are not to be trespassed by governments and therefore set limits to their authority¹⁷.

The doctrine of constitutionalism is doctrine of political authority. So, the government in constitutionalism is limited by human rights and separation of powers. The principle of human rights is external principle, which confines state powers in relation to civil society. The principle of separation of the power is internal principle, which preserve that no state body or person can prevail within the state, i.e. it is prevention for a concentration of the power in a way that it becomes a threat to individual liberty. The separation of powers has two aspects: separation between the different branches of government (the check and balances make the system with

¹⁵ Ulrich Karpen (ed.), *The Constitution of the Federal Republic of Germany - Essays on the Basic Rights and Principles of the Basic Law with Translation of the Basic Law*, Baden-Baden: Nomos Verlagsgesellschaft, 1988, p. 170.

¹⁶ For that see: Jan-Eric Lane, *Constitutionalism and Political Theory*, Manchester and New York: Manchester University Press, 1996, pp. 50, 263; Carla M. Zoethout and Piet J. Boon, *Defining Constitutionalism and Democracy: An Introduction*, in *Constitutionalism in Africa - A Quest for Autochthonous Principles*, Sanders Institut, 1996, pp. 5-6; A. E. Dick Howard, *The Essence of Constitutionalism*, in Kenneth W. Thompson and Rett R. Ludwikowski (eds.), *Constitutionalism and Human Rights: America, Poland, and France*, University Press of America, 1991, pp.18-30; R. P. Peerenboom, “What is Wrong with Chinese Rights?: Toward a Theory of Rights with Chinese Characteristics”, *Harvard Human Rights Journal*, Vol.6/1993, p. 34; Michael C. Davis, “The Price of Rights: Constitutionalism and East Asian Economic Development”, *Human Rights Quarterly*, vol.20/1998, p. 307; Vojislav Stanovcic, “Konstitucionalizam i ljudska prava u Istocnoj Evropi”, *ARHIV*,1-2/1990, p. 394; A. E. Dick Howard, “Demokratijata v zori” in “(Na)vra}awe kon demokratijata“, *Makedonsko radio - Treta programa*, Skopje, br.47-48,pp.107-109.

¹⁷ Joseph Raz, *The Morality of Freedom*, Oxford: Clarendon Press, 1988, p. 19.

separated branches of government works) and separation between different levels of authority (federalism).

2. *Existence of higher law.* The constitutionalism presupposes existence of system of constitutional rules which are superior to all other laws created by any body of the state and which are binding on all state bodies. So, the constitutionalism includes the idea of constitution or fundamental law, which means that the state or any system of government must be founded upon law, while the power exercised within the state, should conform to definite legal rules and procedures. When government acts according to these basic rules (which are not necessarily written) its actions are predictable, and “predictability of state actions is basic rule of constitutionalism”¹⁸.

3. *Protection of human rights - sanctity of the individual.* The human rights are essential element and aim of the constitutionalism. The ideas of natural rights were powerful force in shaping constitutionalism. The concept of natural law is only inherent to the constitutionalism. The constitutionalism is anti-positivistic in its essence. A real test for existence of the constitutionalism is whether human rights are guaranteed and protected. The sanctity of the individuals and protection of their rights is matrix of constitutionalism. To the extent that commitment to rights is necessary condition of constitutionalism, the argument is circular: constitutionalism is necessary for rights, and rights are necessary for constitutionalism¹⁹.

4. *Rule of law.* Some authors prefer the term “government under the law”, on the ground that it is more accurate than “the rule of law”²⁰. But it is too narrow and it is an important part of the rule of law, but not the whole.

In its most general sense, the rule of law as a principle of limited and controlled political power by the law may be equalized with the constitutionalism. But they are not the same.

The “rule of law” could be defined starting from different approaches²¹. In its different meanings rule of law includes internal morality of law, supremacy of the law,

¹⁸ Carla M. Zoethout and Piet J. Boon, *Defining Constitutionalism and Democracy: An Introduction, in Constitutionalism in Africa - A Quest for Autochthonous Principles*, Sanders Institut, 1996, p. 4.

¹⁹ Simply as an analytical matter, wholesale rejection of the constitutionalism necessarily entails rejection of rights because one element of constitutionalism is individual rights. See: R. P. Peerenboom, “What is Wrong with Chinese Rights?: Toward a Theory of Rights with Chinese Characteristics”, *Harvard Human Rights Journal*, Vol.6/1993, p. 35.

²⁰ The concept of rule of law, and not the Rechtsstaat (juridical state) is inherent in the constitutionalism. J. La Palombara wrote: “the difference between the Rechtsstaat and constitutionalism is that the rule of law in former is based on the concession from the rules. The concession implies that the state has elected to engage in self-limitation in the exercise of power. But under constitutionalism the limitation is found to be a matter of right established by a combination of historical tradition and philosophical principle. While the distinction may sound legalistic, its impact is very real. It is like the contrast between an all-powerful father, who from time to time may refrain from tyrannizing over his children and even give them certain areas of freedom and independence to act, and a family where certain areas of freedom to act and take decisions are claimed and accepted as inherent in the family members”. J. La Palombara, *Politics Within Nations*, Englewood Cliffs, 1974, p.106. More about the difference between rule of law and juridical state see in Harold J. Berman, *The Struggle for Law in Post-Soviet Russia*, in Andràs Sajó (ed.), *Western Rights? Post-Communist Application*, Kluwer Law International, 1996, pp. 41-55.

²¹ See the definitions in Geoffrey de Q. Walker, *The Rule of Law - Foundations of Constitutional Democracy*, Melbourne University Press, 1988, p. 23.

exclusion of arbitrary powers, equality before the law, guarantees of human rights etc. No matter by which approach the rule of law is defined; it is closely connected with the constitutionalism, as a foundation of constitutional democracy. The constitutionalism as well as rule of law is value-oriented concept.

The rule of law is the focus of justice. In understanding and applying the rule of law - principle, two strands may be used:

- “the value oriented, concerned with intensely human and humane aspirations of personality, conscience and freedom;

- the structure oriented, concerned with vastly more mundane and mechanical matters like territorial boundaries, local government, and institutional arrangements.

In the model of the rule of law - state with separated and divided powers those two strands are intertwined in a single, grand fabric of law and politics. The concerns that inspire the system’s design are human; the design itself is mechanical... But, in the rule-of-law state structure serves substance in a framework basically designed by the constitution and ultimately supervised by a disinterested judiciary”²².

The best well-known scholar who laid down the foundations of rule of law is Albert Venn Dicey. Dicey’s exposition of the rule of law rested on 3 premises:

- a) The absence of arbitrary power - no man is above the law and no man is punishable except for a distinct breach of the law established in the ordinary manner before the ordinary courts;

- b) Equality before the law - every man is subject to the ordinary law and the jurisdiction of the ordinary courts;

- c) Judge-made constitution - the general principles of the British constitution, particularly those governing the liberties of the individuals, are result of judicial decision conforming the common law²³.

He claimed that English constitutionalism combined two guiding principles: a) sovereignty of Parliament and b) the rule of law; and was criticized that his model is contradictory. The constitutional customs and conventions are relevant for rule of law. If parliament has sovereignty as Dicey claimed, then how could it be bound by rule of law? The problem called auto-obligation dilemma implies that a political body that is sovereign cannot lay down institutions that bind itself²⁴.

So, the question that rises is the question whether the constitutionalism and sovereignty can be harmonized. Similar and closely connected with this is the question about harmonization of the constitutionalism and democracy, i.e. the question about

²² Ulrich Karpen (ed.), *The Constitution of the Federal Republic of Germany - Essays on the Basic Rights and Principles of the Basic Law with Translation of the Basic Law*, Baden-Baden: Nomos Verlagsgesellschaft, 1988, p. 173.

²³ W. Friedmann argues that “Dicey’s formulation of the rule of law is no longer acceptable, since it equates the rule of law with the absence not only of arbitrary, but even of ‘wide discretionary’ power.” According to him, “The weaknesses of Dicey’s conception are magnified in the modern reformulation of the rule of law by Hayek, which: (a) identifies the rule of law with the economic and political philosophy of *laissez faire*, and (b) is predicated on the fixity of legal rules, and the corresponding absence of judicial discretion.” W. Friedmann, *Law in Changing Society*, Baltimore, Maryland: Penguin Books, 1964, p. 374.

²⁴ See Jan-Eric Lane, *Constitutions and Political Theory*, Manchester and New York: Manchester University Press, 1996, p. 44.

“counter-majoritarian dilemma.”

5. *Consent of the governed.* One of the benchmarks of the constitutionalism is the government derived from the people and which exist by their consent. The first ideas of the constitutionalism (Hobbes, Locke) were based on the conception of contract (trust). The idea of government as a trust still exists. The ruler is the agent of the people, because “all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.” (Virginia’s Declaration of Rights. 1776). The test of constitutionalism at work is whether the constitution establishes genuinely representative institutions, bolstered by the freedom to form political parties, ready to access to the ballot, and free and robust debate on public issues²⁵.

3. The principle of legitimacy as sustainable resource of constitutionalism

The principle of legitimacy is one of the basic principles on which the legal and political system is based. Its emergence, foundation and respect are believed to represent a civilizational value. In modern conditions, the principle of legitimacy is a principle of modern legal systems and one of the fundamental ideas of legal and political philosophy.

Although legitimacy has a central place of study in political sciences, the principle is also subject of study in legal sciences, sociology, philosophy and political anthropology. Hence, there are numerous and different definitions and explanations of the term legitimacy. Regardless of this, when the term legitimacy is mentioned, there is a general understanding of what is behind it. Thus, the idea of legitimacy is initially associated with *the right to rule*. In its essence legitimacy is a recognition of the right to rule; an assurance of the worthiness of the institutions that exercise power.

In the most general sense, the term legitimacy means consent, that is, citizens accepting institutions in the system of state authority organization. Legitimacy means the acceptance of those who exercise power by the members of one political community.

The acceptance or consent of the power holders by the citizens is the result of:

- The acceptance and consent of some *higher values* (justice, democracy, equality, freedom, etc.) that the power holders will cherish and respect.
- The acceptance of the *procedural rules* according to which the election of the power holders and the holders of state functions is carried out (existence of multi-party elections, conducting fair, democratic and free elections).

The term legitimacy comes from the Latin word *legitimare*, meaning - to declare, to mark something as legal. Hence, we can understand the frequent identification of the term legitimacy with the term legality. In this context, it must be emphasized that there is no equals sign between these two categories, and that although close, the two terms are not synonymous. Therefore, we need to distinguish the term

²⁵ A. E. Dick Howard, *The Essence of Constitutionalism*, in Kenneth W. Thompson and Rett R. Ludwikowski (eds.), *Constitutionalism and Human Rights: America, Poland, and France*, University Press of America, 1991, p. 18.

legitimacy from the term legality.

Namely, the principle of legality refers to the organization and functioning of the institutions and holders of state authority in accordance with the laws of the existing system. The principle of legitimacy, on the other hand, represents a positive evaluation, assurance in the correctness and acceptance of the institutions and authorities, because they are in accordance with the political ideals and values enjoying the support of the majority of citizens²⁶.

Not every state authority enjoys the authority of a legitimate state authority. It can be subjected to the principle of legality, but at the same time it could not be legitimate and vice versa. For example, the rule of England in the territory of India was legal, but it lacked support (legitimacy) by the local population. During the apartheid laws in South Africa were adopted in a predetermined procedure and in accordance with the Constitution. Regardless, these laws lacked support from citizens, and thus the entire political system lacked legitimacy.

Legality by itself does not guarantee or ensure the acceptance of the authority, acceptance of the obligations by the citizens or civil obedience. So legality by itself does not guarantee legitimacy. It is so because the principle of legitimacy is broader and includes the principle of legality within itself.

The principle of legitimacy possesses the mark of a moral or rational principle. Achieving the support and acceptance of the power holders by the citizens cannot be enabled by respecting only the laws and subjugating everyone and everything *sub lege*, it also depends on the observation of some higher humanistic principles and values, immanent to the community.

Table 1. *Principle of legality Vs. Principle of Legitimacy*

PRINCIPLE OF LEGALITY	PRINCIPLE OF LEGITIMACY
It refers to the law and implies the subordination of the law and positive law.	<i>It refers to the ethical values, meta-legal rules, categories and principles.</i>
The principle of legality is linked to compliance with the law, compliance with positive law.	<i>The principle of legitimacy, on the other hand, includes following a correct, true, moral and ethical path.</i>
The principle of legality limits us to the law and refers to what we can, what we must and what we must not do and what is prohibited.	<i>Legitimacy is linked to what is achieved through justice and righteousness, what is earned, or what is inherited.</i>
Legality refers to the activity - whether something undertaken, made, and completed is in accordance with the law or is a violation of it.	<i>Legitimacy refers to the <u>support for a certain activity</u> - whether someone has or does not have support to perform an activity, action, competence or function.</i>

Source: *compiled by the authors*

Unlike the principle of legality, for the study of which legal sciences are more interested in, the principle of legitimacy has a central place in the studies in the political science.

²⁶ Markovic, Ratko. *Constitutional law and political institutions*. IP Justinijan, Beograd, 2004, p. 195.

3.1. Theories about the legitimacy of the state authority

The question of the legitimacy of the state authority is related to the question of justifying the existence of the state authority, that is, the question of where the authority of the state authority comes from. Starting from here, the classical legal theory makes a classification into three large groups of opinions about where the authority to exercise power comes from. These are:

- Theocratic theories according to which authority comes from God and only God is the true ruler. The source of the authority to rule the earth is divine, and the ruler on the Earth is appointed from above, by God. Therefore, the ruler answers to God alone. People are bound to obey such state authority, because its source is divine. Hence, the state authority of the country is legitimate as long as the ruler obeys God's commandments and rules, which are always superior to the law in the country.

- Autocratic theories according to which state authority is its own source of authority and power. State authorities are absolute and free from any form of influence, both from above (God) and from below (citizens). The legitimacy of the state authority derives from the state's right to rule.

- Democratic theories locate the source of the legitimacy of the state authority in the citizens and their will. The state authority has a "power of attorney" to rule given by the citizens. The will of the citizens is mirrored in the will of the state. Namely, the will of the majority of citizens with which they choose their representatives in the representative body, expressed directly in free elections, represents the basic source of legitimacy of the state authority. The state authority originating from the citizens is legitimate.

The essence of all three groups of theoretical opinions is to determine which state authority is legitimate and where the source of legitimacy should be sought. Finally, legitimate authority is the authority whose bearer, "holder" is legitimate. If the state authority is exercised by someone else, then he/she appears in the role of a usurper who does not have the support and consent to rule. He/she may have the material power and the power of coercion with which he rules, but "bare" power is impossible to maintain in the long term without the support of the citizens. That is why the implementation of such state authority is illegitimate. Namely, the legitimate authority is the authority that has a justification for its existence, the authority whose existence and exercise are agreed upon by those over whom it is exercised. In modern political systems, the legitimate authority is the state authority, which is an expression of the trust, will and consent of the citizens expressed in elections²⁷.

Another view suggests that myths, legends, magic, or the authority of God are usually the means used and referred to by the ruler to justify its rule in traditional societies. Modern systems, on the other hand, justify their existence and functioning with the claim that they represent the will of the citizens, which is reflected in 1) the results of the elections and 2) the written constitutions in which the basic values,

²⁷ Ibid, p. 197.

principles and rules to which the society is subjected are systematized²⁸.

The legitimacy of the state authority is directly related to the stability of the state authority. Namely, the state authority owns the monopoly of state coercion and can use it. However, if the implementation of authority and the functioning of the state authority in general is realized only by using it, we can understand why it will not enjoy legitimacy and therefore will not be able to survive in the long term. Such state authority, which bases its existence on the absence of support from the citizens, will face a very uncertain fate. Therefore, every state authority tends to enjoy legitimacy from the citizens, and its "supremacy" to be deserved, approved and accepted. Finally, this is why it is said that the legitimacy of state authority is a prerequisite for its stability.

Starting from here, Max Weber distinguishes three basic forms, ideal types of legitimate authority. These are: traditional, charismatic and rational-legal legitimate authority. Shortly, citizens can have faith in the authority and it will be legitimate, because they have accepted and adapted to the established rules of behaviour (traditional authority), believe in the personal characteristics of their leader, chief, ruler (charismatic authority) or accept them and agree with the general rules established in the laws (rational-legal authority). Common to each of these three ideal forms of legitimate authority is the necessity of an "adequate amount of good will among the citizens" to submit to the decisions of those who make them. Weber connects each of these three types of legitimate authorities with the authority of their holders, "titulars".

- Traditional authority is based on the belief in the sanctity of ancient traditions and customs as well as the legitimate position of those who exercise authority according to those traditions. Traditional authority is considered to be legitimate because "it has always existed" and history has confirmed it. Weber believes that the traditional authority operates according to a body of concrete rules: that is, fixed and unquestioned customs that do not need to be justified because they reflect the way things have always been²⁹. Traditional authority is closely related to the hereditary system of power and privilege. The one who possesses traditional authority "has no reason to justify his/her position, and respecting him/her and submitting to his/her will is considered to be the natural order of things" ³⁰. Traditional authority is usually an extension of patriarchy and is typical for the tribal organization and gerontocratic communities. This system of values projected onto the political system (e.g. dynastic rule in Kuwait and Saudi Arabia) represents a ruling basis that the subjects are obliged to unconditionally accept.

- Charismatic authority is based on the attachment to special and exceptional holiness, charisma, exemplary character, heroism of a person. This form of authority is based on the power of the person, that is, the personal characteristics of the individual. Charismatic authority does not necessarily depend on the status, that is, the social position or function of the person. It depends exclusively on "the ability of the leader,

²⁸ Reyes E. Giovanni (2010) *Theoretical Basis of Crisis of Legitimacy and Implications for Less Developed Countries*. Revista de la Facultad de Ciencias Económicas y Administrativas. Universidad de Nariño Vol. XI. No. 1. p. 146.

²⁹ Heywood Andrew (2019) *Politics*, Macmillan Education Ltd. p. 80.

³⁰ Hague, R and Harrop, M. (2010). *Comparative State authority and politics*. Palgrave MacMillan. New York, p. 12.

who in the role of a hero or a saint directly and personally influences the followers"³¹. It is said that "charismatic authority has an almost mystical character, and it strives for personal surrender to the charismatic leader, emotional dependence, and even worship"³². Usually, charismatic leaders appear in times of crisis and upheaval, and Jesus Christ, Mahatma Gandhi, Martin Luther King, Hitler, Tito are appropriate examples of this. This form of authority is the complete opposite of traditional authority. Namely, if the traditional authority imposes a requirement to respect the established rules, customs and traditions, and the personality of the ruler in which the experience and wisdom of life are concentrated, the charismatic authority rejects all that. The charismatic leader always looks ahead to the future and convinces his followers of the existence of the "promised land", "just around the corner"³³. The charismatic leader tends to develop a "cult of personality", often attributes messianic characteristics to himself/herself and demands complete submission from his followers and subordinates. Charismatic authority, which is exercised through the authority of the charismatic leader, does not rest on formal rules, actions and procedures and is therefore unlimited. On the other hand, Weber points out that charismatic authority is so much connected and dependent on the leader who possesses charismatic authority, that the system almost never outlives the leader. Namely, unlike the traditional authority, the charismatic authority does not have the capacity to sustain itself. It fades and is gradually lost with the disappearance of the leader, so the regimes of Napoleon, Mussolini, and Hitler, are the most suitable example of this form of authority. On the other hand, it can be transformed into a more stable structure. This process is labelled as "routinization of charisma" (the religious leader founds a religious community; the politician forms a political party). Weber points out that "the destiny of the charisma is to withdraw itself with the development of the established institutional structure"³⁴.

- Weber's last form of authority is rational-legal authority. This authority rests on the belief in the legality of the general rules of conduct, as well as in the right of those who exercise the authority to do so³⁵. Weber associates this form of authority with a set of clear, precise and well-known rules of conduct. In the rational-legal form of authority, "obedience" refers to the rules and the law, not to the power holders. It enables the establishment of a system of organization of power that is focused on the law, and not on the tradition or charisma of the powerholder. Rational-legal authority is typical of modern democratic countries in which the power of the office holders (president, prime minister) depends on formal, constitutional rules that determine their position and thus limit the authority. Hence, the advantage of this Weber's form of authority - a significantly reduced possibility for its abuse comes from this. However, Weber does not idealize this form of authority and emphasizes that it also has its shortcomings. The

³¹ *ibid*

³² Hejvud Endru. (2002) *Politika*. Clio, p. 404.

³³ Hague, R. and Harrop, M. (2010). *Comparative State authority and politics*. Palgrave MacMillan. New York. p.13.

³⁴ Weber M. (1922) *The Theory of Economic and Social Organization*. Berkeley, CA University of California Press p. 129.

³⁵ Markovic. Ratko. *Constitutional law and political institutions*. IP Justinijan, Beograd, 2004, p. 195.

possibility of complete depersonalization and dehumanization of society, as a result of the spread of bureaucratic and technocratic forms of organization is such a disadvantage. Namely, the rational-legal form of authority seems to be becoming predominant in the modern society. Thus, the actions of public officials exclusively in accordance with the established rules and procedures without variations in their interpretation, the strict adherence of judges to the legal norm excluding the specifics of the case they are working on, are examples of "rationality developed to the extreme". This way of acting may lack the effort to achieve a higher value than the "right in the books", and more importantly the following of a correct, moral and ethical path. The latter is related to the essence of legitimacy and represents the core of the idea of community life.

Finally, in the modern systems, there are a number of factors that condition the legitimacy of state authorities. However, it is considered that state authorities will be legitimate if three basic conditions are met. These are:

- Authority must be exercised according to pre-established and accepted rules;
- These rules must be an expression of the consent of the entities being governed;
- These rules must aim to achieve higher principles, categories and values (dignity, equality, freedom, justice, tolerance).

3.2. Legitimation crisis

The question of political legitimacy was not always relevant. The period after the end of the Second World War is a period when the legal and economic instability of the systems had a central place of study by the legal, political and economic sciences. Only the period of the 70s of the last century actualized the issue of the study of legitimacy and even more the issues related to the legitimacy deficit and the legitimacy crisis.

These topics in modern conditions seem to be constantly in the focus of study and analysis. Some research shows that although in general the demands of the citizens and aspirations for democracy are high, the faith, support and consent of the citizens towards the institutions of the system is in constant decline. This "erosion" of legitimacy in the institutions of the system and the continuous decline of the "levels" of support in modern democracies are worrying and inevitably actualize the issue of the possible emergence of a legitimacy crisis.

In modern conditions, all debates about legitimacy are almost always aimed at:

- the stability of the political system, and
- the capacity, that is, the ability of the established political system to solve problems and to respond to the demands, wishes, and preferences of the citizens.

The legitimation crisis refers to the decline of trust, support, and consent that the political system should enjoy. The term was first introduced in 1973 by the German philosopher and sociologist Jürgen Habermas. Habermas links the emergence of the legitimation crisis with the loss of the capacity and ability of the political system to perform the functions and goals for which it was established.

Finally, any political system depends on its recognition and acceptance by the citizens. In essence, the citizens are the ones who must respect and "submit" to the laws and generally accept the decisions made by the institutions in the system. This manifested "good will" and consent of the citizens towards the system must exist in continuity, in order to implement the binding decisions that the established system creates and makes.

In the event that the consent and trust in the system by the citizens begins to disappear, and the "level" of support decreases, the established political system may begin to face the problem of its stability. This means that the appearance of the deficit of legitimacy in the political system and its institutions calls into question its stability and further existence, functioning and development. Namely, the theory points out that the functioning of the system and its efficiency are directly conditioned by the trust and support that the system receives from the citizens. So, the stability of the system and its capacity to solve problems are directly proportional to the degree of support, consent and faith that the established system receives from the citizens. Thus, when citizens assess that the institutions are responsive and positively decide on their requests and wishes, they believe in the system and provide its support. Otherwise, if the system begins to lose the ability to respond positively to the demands and wishes of the citizens, the creation of decisions lags behind or is too late, there will be a gradual emergence of a deficit or a reduction in the support it receives from the citizens.

The degree of political participation, active support of state authority's activity, alternative forms of support (e.g. regular payment of taxes, absence of protests, attendance at organized celebrations to mark on national holidays), latent forms of support (absence of polarizing speeches), positive attitudes of public opinion, positive criticism of the professional public can be an indicator of the degree of support and trust that the system receives from the citizens.

Hence it can be concluded that political legitimacy is an active and dynamic category. Thus, the daily activities undertaken by the state authority are constantly under surveillance and subject to evaluation, which affects the overall trust and support that the system receives. Adherents of these opinions emphasize that this represents a continuous process through which legitimacy is redefined, including the moral and ethical values that were the basis for a certain action or decision by the state authority. Finally, political trust is a reflection of the evaluation of whether the institutions in the system function in accordance with the public's expectations³⁶.

Examples of the emergence of a legitimization crisis noticed in the world history can be seen in France after the revolution of 1789, the countries of Africa that gained independence after their liberation from colonial slavery, the countries of Eastern Europe that freed themselves from the Stalinism, Libya after the revolution, part of the Arab spring. Some authors also point to the presidential elections of 2000 in the USA, in which the main opposing candidates were Al Gore and George Bush as an example of legitimacy crisis.

³⁶ Hejvud Endru, *Politika*, Clio, Beograd, 2002, p. 405-409.

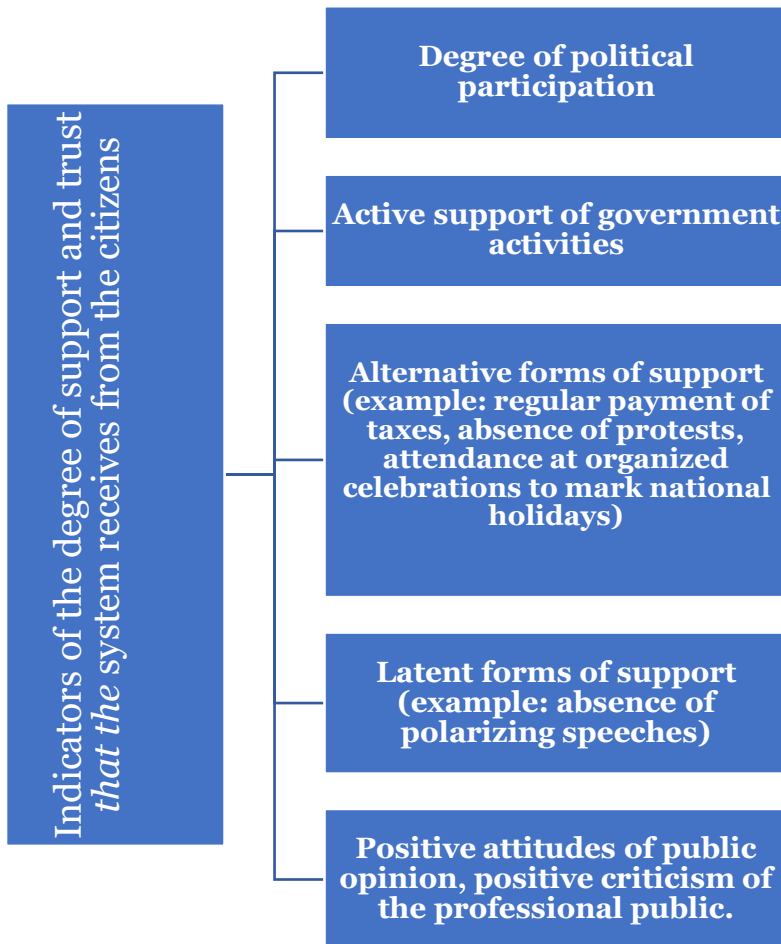


Figure 2. *Indicators of the degree of the support that the political system receives*
Source: compiled by the authors

As conclusion, today in democratic countries, the legitimacy of the state authority is acquired in elections that are free, fair and conducted in accordance with agreed electoral rules that enable a fair competition of the candidates. But the legitimacy of the state authority is not given once and for all. Every authority should maintain its legitimacy, through respect for the constitution, laws, human rights, principles of justice and fairness, as well as the demands of the citizens. If the state authority does not behave in this way, regardless of whether it was elected in free, fair and democratic elections, it will lose its legitimacy and a legitimization crisis will arise.

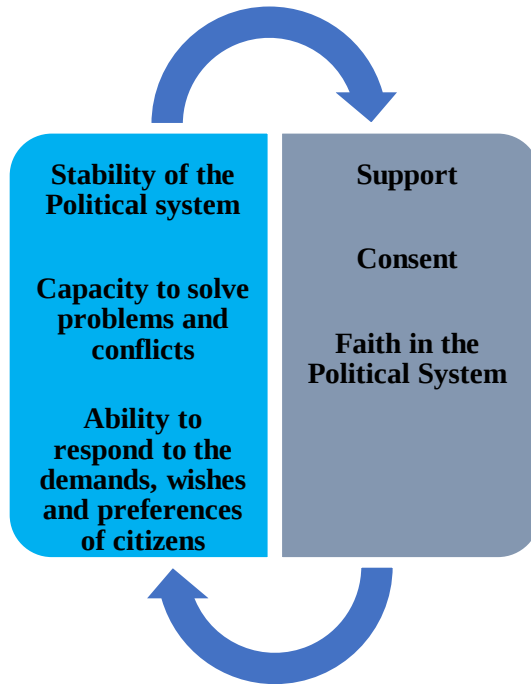


Figure 3. *Relation between the Political system and Stability*
Source: compiled by the authors

4. Conclusion

Sustainability is a concept based on what people value or find desirable. The three main elements (pillars) of sustainability are environment, economy and society.

Social sustainability is one dynamic field in overall design of sustainability. Social sustainability is the dimension of sustainability concerned with the well-being and longevity of a community and its people. It is a process for creating sustainable successful places that promote wellbeing and quality of life, by understanding what people need and require from the places they live and work. This pillar of sustainability focuses on the need to “put people first” in development processes. It promotes human rights, constitutionalism, social inclusion of the poor and vulnerable by empowering people, building cohesive and resilient societies, and making institutions accessible and accountable to citizens. Social sustainability inevitably encompasses the concept of legitimacy, as one aspect of what people need. Constitutionalism is another crucial aspect essential for social sustainability. Therefore, these three concepts—sustainability, legitimacy, and constitutionalism—are inherently interconnected and mutually dependent.

Achieving social sustainability requires a lot of dedication, persistence and effort in fulfilling principles, processes, concepts and very often meta-legal values and utopian ideals. The principle of legitimacy is one of those basic principles on which the legal, political system and community are based. Its emergence, foundation and respect

are believed to represent a civilizational value.

The legitimacy has inception effect of social sustainability. In the most general sense, the term legitimacy means consent, that is, citizens accepting institutions in the system of state authority organization. Legitimacy is defined by the acceptance of those who exercise power by the members of one political community. On the other hand, the concept of legitimacy is *conditio sine qua non* for constitutionalism. It is one of the basic elements of constitutionalism as an idea of limited power.

Legitimacy is not a constant, but a dynamic category. It should exist in the established system, it is required for the stability of the established system, but its fading or loss is not excluded either. However, legitimacy is a renewable category, and as such it is a sustainable pillar of constitutionalism. As such, legitimacy represents one of the fundamental concepts of sustainable “political” community, and attainable political “ecotopia” which requires dedication and constant work.

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