The Assessment of Legitimacy in the 21st Century

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Introduction

My comments regard the discussion of the topic of legitimacy as presented in the book, *Legitimacy: Ethnographic and Theoretical Insights*, edited by Pardo and Prato in 2019. Immediately, one is directed back to Malinowski's (1945) attempt to address the issue in the wake of the ruins of indigenous cultures by colonialism, and especially those of Africa. The essential element was power and how power was exercised by the colonial administrator in relation to both the indigenous leaders and the local custom of authority as defined by culture and history. To Malinowski, what was legitimate was not some ossified report of a people from the past, or retained custom in myth, but what worked to benefit the people at that time and place and was considered essential for their survival in the practical challenges of the moment. Malinowski's ideas were augmented by Hoebel's (1954) compendium of indigenous law and practice. In both cases the focus was on the living means of negotiating practice within and between communities, more difficult to achieve in Malinowski's descriptions of failed attempts of administrators to address power asymmetries. But, in general, Hoebel's selections were often based on early reports that had attempted to design a picture of indigenous life without regard to European contact and power.

The task today is as difficult as developed countries are made up of waves of immigrants and historical amendments of custom (for example, Common Law vs. Code of Napoleon) and in the postcolonial world the effect of colonial law on top of indigenous custom has been a history of repression and compromise so thorough that the performance of agreement is often more a dance of charades than a process of compliance and consent. The postcolonial world, whether in New York, Paris, Moscow, Kinshasa, Hong Kong or Cusco, extends and intensifies the effects of colonialism creating unified monetary and social structures that define roles and goals.

Parsons (1937) reviews the attempts by Durkheim and Hobbes to construct a system of constraints or contracts that, in his assessment, relies on an unrealistic degree of enlightenment, as opposed to the 'biology' of game theory which Dawkins (1976) and Trivers (1985) situate at the core of choice, while others, for example Tooby and Cosmides (1989) in evolutionary psychology, see genetic limits to choices based on psychological adaptations. Many newer theories are built on earlier work; for example, Durkheim's Deterrent Theory is at the centre of the game theory. Weber (1922) makes the simple statement that, 'Legitimacy may be ascribed to an order by those acting subject to it…' and so our understanding of legitimacy must be derived from observation and interpretation of the motives and history of the performers. He goes on to give 4 basic ways that these performances may be ascribed: 1) By tradition; 2) By emotional attitudes revealed by a model that actors have come to be associated with; 3) By

rational belief; 4) As recognized to be legal. Given Weber's emphasis on the rationalization of human society, all these could be grouped under number 3 as variations of this theme.

Pardo and Prato (2019) cite the OECD's (2010) focusing on 4 similar explanations. They are: 'Input or process legitimacy, which is tied to agreed rules or procedure; output or performance legitimacy, defined in relation to the effectiveness and quality of public goods and services; shared beliefs, including a sense of political community and beliefs shaped by religion, traditions and "charismatic" leaders; and international legitimacy, i.e. recognitions of the state's external sovereignty and legitimacy'.

Recently, Pengfei Su (2018) related the similarities in institutions and history of two of the great states of the ancient world, China and Rome. He found the success of these two entities to be derived from the similar focus on integration policies and the creation of internal legal mechanisms to achieve goals of domestic peace. The Greek historian Polybius writing in the 3rd century B.C.E. found, after a long study of Roman history and law, that it was both the existence of a constitution and the belief of citizen and subject that justice was a practical principle. In my own study of the Goodman Building 10-year rent strike (Caldararo 2019), it was clear that the strike worked, the building was saved and a new one built because the former owner, who asked the tenants to sue him to prevent the San Francisco Redevelopment Agency from taking possession of the building, believed he had rights. But success was also due to the fact that the tenants acted as if they had rights; many SFRDA employees agreed with that belief and undermined the Agencies semi-legal acts, and the elected officials and many citizens of the City also held these beliefs. As the OECD paper states, legitimacy rests on the performances of actors from several segments of society — citizens, bureaucrats and enforcers of social rules.

Building Legitimacy and Delegitimization of the Periphery
Edward Said (1981) most clearly defined the process of creating the other and manufacturing spurious boundaries of the other. I have addressed in several publications this process in the conflicted space of rebellion and repression in the 20th and 21st century battleground over contemporary modernity and its legitimacy (Caldararo 2002, 2006, 2015). Douglas (1966) frames the process of the conception of delegitimization as contamination or foreign attack on purity and health in the body of the society. We see this with the victimization of Jews in Hitler's Germany and in the Otherness of the Rohingya people (Green et al. 2015).

Prato and Pardo (2019) describe the responsibility of rulers, the problem of authority and the effect of the use of power where in many of the ethnographies people find themselves asking, 'What will happen to us?' The contradictions in the misuse of institutions (the referendum in Brexit) and the attack on them (as in the USA by President Trump on the FBI) are felt across the globe. In the example of the UK, the use of the referendum to achieve a political goal was an exercise in the production of legitimacy by undermining the political process and confusing how authority is engendered. It was obvious that while Britain lacks a formal constitution (though for some, like Bagehot [1867] it existed, in unwritten form, [see Blick and Blackburn 2011]), the failure of the Chartist Movement in the 19th century (Chase

2007) was a final example of the supremacy of Parliament over democratic movements within the country's legal system. This brings up the question Pardo (2000) asked about the responsibilities of élites to the governed, a central problem since before Cicero's discussion of the morality of the state. The nature of consent versus coercion.

Morality and Legitimacy

Historically, the conceptions of moral and legitimate authority were often derived from perceptions of the gods' favour. The tale of Oedipus Rex is one example; another is the loss of the 'Mandate of Heaven' for the Chinese (Reischauer and Fairbank 1960); and in Confucianism legitimate rule is demonstrated by the approval of the people (Meng K'e, ca. 319-314 B.C.E.). We find the same relationship in the ancient Egyptian idea of Ma'at, often translated as justice, order, truth and righteousness (Wilson 1951). This is seen also in the Arabic idea of legitimate rulers, where the responsibility to maintain order and law as well as consensus in the community, the 'ulama', is central (Hourani 1991).

Anthropologists, as Pardo and Prato (2019) note, are situated in their work to be exposed to the increasing questioning of legitimacy across local, national and supranational decision-making that affects their lives. Yet, the outcome of changes in policy that have been products of long-fought struggles to achieve equity in housing, for example, were destroyed with the assassination of Mayor George Moscone and Supervisor Harvey Milk in San Francisco in 1978. The milieu of authority and legitimacy that had been built up by decades of work was challenged in the wake of the violence. The 'shifting' nature of legitimacy noted here was also seen in traditional societies, as among the Hopi in Ruth Benedict's words, 'It is only in time of epidemic that they pursue witches' (1934: 122).

Prato (2019) has produced a telling comparison of two countries, one western democratic, Italy and one socialist, Albania. The interesting link between these two countries is not just the Italian colonial adventure in the early 20th century, but the continued immigration of Albanians into Italy after WWII. In the case of Italy, its regional differences have come to the fore in the post-WWII period. As an Italian with ancestry from the south (Basilicata), I experienced being called an 'Arab' more than once in the 1970s in the north. There is certainly a difference in history for the two regions, the Italian south experienced occupation by Muslims, Normans, Germans, Spanish and French after the fall of the Western Roman Empire. The north also saw similar invasions but mainly from Germanic tribes and then, later, German and French states. The perception of difference is what is critical and here Italians do see considerable otherness in the peninsula. The appearance and success of the Northern League and the Five Star Movement in the south are consequences of different perceptions of identity and different histories of investment and of government policy. In Albania one also sees regional variation, which is historically based as well as affected by geography. While there has been a history of emigration to Italy, a massive influx of Albanians also has arrived in Greece in the past 30 years, and the southern areas of Albania have been considerably affected by this movement of people, loss of labour and permeability of the border for illegal traffic (Dalakoglou 2010).

Prato brings up the contradiction in Weber's writings concerning forms of authority and legitimacy. She focuses on the German term he uses, *herrshaft*, power, rule and domination as English equivalents. The imposition of control via the threat of violence is conceived as 'a power without authority'. This distinction is from the work of Pardo (2000) but power is often the means to legitimacy, as Mary Beard (2015) has written in the foundation of early Rome or Coulton (1925) on Medieval villages. The manufacture of legitimacy is a process of both power and conditioning or acceptance. Forms of power can be constructed for different institutions (Etzioni 1961). Executions and ritualized legal murder (for instance, police shootings of African Americans) become legitimate when they are imbued with the power of the state and its local institutions (Grand Juries, see Caldararo 2016). This is just as clear as in the partition of peoples in colonialism or in treaties signed at the end of wars as in the division of the Ottoman Empire and the creation of the states of Iraq and Syria (Howard 1931).

Expectations, Theory and Practice

Prato is right to address the issue of legality and acceptance. People do not always respond to legalisms, rather they often find common ground in shared values and impress these onto what even legal framework is present (Erlich 1975, Gruter and Bohannan 1983). The contradictions in Weber's work are underlined by Prato where she notes that assumptions in theory, as in 'rational bureaucratic authority' or representations of authority in mass democracies, present difficulties in describing the function of theory in the practice of institutions. This was a central theme of Gans' (1967) description of the perversion of democratic institutions in local small government. As Prato finds, there are differences among citizen expectations of how systems are supposed to work, how they function in practice, how transparent inequalities are and how they are defined, hidden and made exceptions to the social contract in any particular area. These inequalities can persist only if local social action can be expressed as discontent that results in practical change or modifications of benefits. Efforts to reconstitute institutions, to bring 'integrity' back to them can also result in increased apathy as is taking place on a larger scale in Italy with the failure of the Five Star Movement to produce change or benefits, while strangely the Northern League's national and international criticism of the status quo has satisfied its base. As Prato describes, the failure of Brindisi's political structures to produce laws that could deliver on benefits or real change in institutional behaviour resulted in a demoralized population and could not rebuild trust between rulers and citizens. This situation undermines citizen participation and induces cynicism based on a lack of observable change as well as display of a continuing lack of integrity.

The situation in Albania parallels that in Italy, the demonstration of corruption among officials without beneficial change only leads to apathy and reinforces local corruption. The nature of corruption and inequality — no matter who is in power, communist or not — creates a culture of patronage, with exposure and punishment as sidelines of entertainment without real change. This fosters an atmosphere where charges of fraud, true or not, simply reinforce the status quo. A magnified example of a crisis of legitimacy is the situation in Venezuela in 2019.

Here an elected president is challenged by an elected representative, backed by foreign governments and minority parties. The quality of legitimacy is the issue brought out by disagreement based on ideas of how elections represent communities of citizens recognized as legal voters and under what conditions their votes are counted. This could easily be compared to the US election in 2016 where charges of voter roll tampering and foreign involvement by Russia undermined the legitimacy of the election. Pardo (1996, 2017) has demonstrated the self-interest of élites and power blocks in the mismanagement of Naples. In California, we find numerous examples. One, Proposition 13 (officially named the *People's Initiative to Limit Property Taxation*), was passed in 1978 by the real estate industry and apartment owners to reduce their tax burden. In a massive public relations campaign, they argued that property taxes had outstripped incomes, especially for the elderly, and had produced massive loss of homes for retired people. Given an adroit combination of well financed TV and radio commercials, door to door and mail delivery of propaganda, these stakeholders were able to distort political debate and hijack the electoral process for their benefit. Using false claims and supposed experts, they overwhelmed labour and community groups' opposition. Without any recognized agency to force factual statements in the media, voters were confused and misled. Actually, a study of tax irregularities in the early 1960s had led to reforms aimed at more equitable and standard property tax collection (Chapman 1998). The passage of Proposition 13 was followed by laws promoted by the same interests to outlaw rent control, except in those municipalities that already had such local laws in place (House of Representatives 1978).

Proposition 13 affected housing law regarding taxation and stripped the relationship between community needs and dwellings as home from the profits to be made from commodifying housing as an asset. Some 200 years of housing law and policy regarding the quality of a home, safety of occupation (substandard vernacular as well as commercially built housing) was ignored as a goal. Part of the rationale was derived from the failure of governments to build sufficient affordable housing and maintain it in a safe and secure fashion (Fossum 1965, Keith 1973, Mann 1975).

Pardo (2019) describes the struggle on the community level of the effects of élite politics and the contending strategies of radical groups and community needs. He terms this confluence of force the 'moral relativism of law' in Italy. An example he gives is the occupation of a renovated historic building by radical groups who use their occupation to create a political confrontation based on their perception of priorities. The conflict of needs of local citizens, historic preservationists and élite politicians created a moral crisis. Whose demands are legitimate? Can the value of legitimacy be parcelled out in percentages of a moral hierarchy?

We found a similar crisis in the USA in the 1970s when housing policy had collapsed into a paralysis due to the failure to maintain public housing projects and the increasing speculation in housing that left whole blocks of major cities ghost towns with abandoned buildings. The number of vacant units skyrocketed in major cities in the USA (Fried 1976). Speculation of land values along with a recession and tax breaks allowed investors to purchase blocks of housing in cities like New York and left them vacant and profit from the situation. We have

experienced a similar rise in abandoned dwellings since the credit crisis of 2007 (Mallach 2018). Today this growing vacancy rate and demolition rate of affordable units is being termed, 'hypervacancy'. A number of factors are functioning to increase the cost of housing, dilute efforts to build more affordable housing and remove useful units from the market (Lama 2006).

One of the responses in the 1970s to this speculation-induced vacancy was squats and occupations. The other was the legal routes of rent strikes and initiative to limit methods in speculation, as in planned vacancy. The rent strike was a means for tenants to act within the law and their actions either condemned or legitimized by the courts on evidence of conditions (see essays in Bratt, Hartmann and Meyerson 1986). Political action attempted to address redlining, rent discrimination against minorities and unmarried couples. The occupation of the I-Hotel in San Francisco lacked legal standing, and the eviction of the tenants was conducted legally but lacked legitimacy by wide margins among the city's citizens and thus the owners were blocked politically from developing the site and forced to sell to a community development corporation that built affordable housing there (Choy 2005, Yu 2017). Where speculators had stopped maintaining buildings and were profiting from large tax benefits in depreciation, they often also stopped paying property tax. This created a legal opening for occupation and what was termed adverse possession (Doskow n.d., Anon n.d.). A historical treatment of the origins of adverse possession can be found in Thayer's culture history of the practice (Thayer 1913). Under this theory of law, a building or property is deemed abandoned by the owner if a person can maintain themselves upon it (in an agricultural setting they can produce crops or animals, in a dwelling they can house themselves in it as their only home). They must do so with obvious possession, where there is a public stance plainly visible to all members of the community. The supposed basis for this occupation is a benefit to society, where the owner has abandoned productive use and the neglect depreciates his ownership as a member of the community. Thus, the value to all is to its use. All tax must be paid by the adverse possessor.

Law and Power

Inevitably, legitimacy is also determined by the perception of the law and the exercise of power. Some judges have supported rent strikes and occupations; others have denied them based on the same laws — this is especially true of the use of Eminent Domain in the history of Redevelopment. Another example would be how the media interpret the nature of claims of different parties to legitimate power. Comparing President Trump's election, some analysts have argued that, since Hillary Clinton won the popular vote and there were widespread voting irregularities and substantial evidence of voter suppression, Trump's election is tarnished and his claim to the presidency questionable. Yet, at the same time, President Trump and his administration have denied legitimacy of the Maduro Presidency based on claims of vote irregularities and recognize a simple lawmaker, Juan Guaido, as the legitimate president of Venezuela (Editorial, *The New York Times* 2019). By the same logic, Democrat Nancy Pelosi could claim to be the legitimate president of the USA. The difference in the two cases is power

and the interpretation of history in the context of possession of power. Venezuela has a long history of contested elections and extra-legal power transfer. In the USA, Trump presents an anomalous challenge to institutions (including the media) that are key to maintaining legitimacy.

This resort to extra-legal means to achieve power based on what Pardo describes as 'bombastic rhetoric' that diminishes the authority of institutions, normality and social dialogue has been utilized by Trump and other 'populist' politicians in recent years, including Putin, Erdogan, Duterte, Orban and others. Validating lawlessness, including voter suppression, threats of violence, illegal campaign activities and money and violence are becoming a means to legitimacy, as Richard Wright (1945) predicted in his Introduction to the St. Clair Drake and Cayton ethnography on Chicago's Black community. This parallels the demise of the Roman constitution and the legal institutions of the Republic described by Lintott (1999) and the rise of Hitler and the Nazi party studied by Shirer (1941, 1960). Pardo has described this succinctly, as '…a blurring of the dividing line between what is legal and legitimate and what is legal and not legitimate in public life' (2019: 74). This is, as he notes, a change in the style of government that begins to characterize a movement and then manages power by replacing the moral agreement on how things are done. This blurring becomes a strategy, as in case of the changes in the relationship between what is legal and what is legitimate in Turkey described by Atalay (2019). This process was seen in the USA in financial transactions that were illegal in 2000 and prosecuted under existing law; for example, fraudulent transactions, paper companies acting as off-balance sheet repositories of debt for Worldcom and Enron and selling of stock based on false information and data (Bratton 2002, Eisinger 2014).

Atalay (2019) goes farther in the analysis of legitimacy and financialization. As Barth (1967) found in Darfur, the process of placing cash value and advantage on every exchange undermines local social capital and the means to build community relations based on gifting or reciprocity. The process where hedge funds have exploited every economic transaction and where merger and acquisition specialists have attacked any corporate lag or monetized value to the highest degree possible (Caldararo 2009) has created an economy that requires constant governmental liquidity to function. The massive inflows of state money in the credit crisis, and after in the Quantitative Easing (QE), is a necessity created by the explosion of financial services since 2000. This process has gone further in forcing the monetizing of every aspect of life today, where people spend an increasing amount of their time at work, or producing 'apps' to get rich, or using their cars as Uber/Lift drivers, or renting their homes to vacationers in systems like Airbnb (Caldararo 2018). The process has kept demand high but wages low, and with the collapse of unions it is likely to continue. QE, however, as described and promoted over 100 years ago by Walter Bagehot (1873) — as a solution for national and regional panics as occurred in 1857 — has no end point except the theorized creation of massive amounts of new capital by technological innovations. Wilkinson's (1973) convincing argument has been the framework to view progress and its ever-successful handmaiden, capitalism. Each need for growth to avoid a Malthusian disaster (Hutchinson 1967) fills the gap yet creates new threats

to prosperity and order, with new crises of capitalism appearing in various form (for instance, war). This is evident in the contrast between the legitimacy established and performed by neighbours in North Kerala as reported by Abraham (2019) and the conflict over the legitimacy of the government of Syria since 2011, when the uprising began there.

The government engaged in terror to protect the power they possessed as rulers and made no compromises with rebels. With the help of the Russian military that crushed Chechen neighbourhoods to install a legitimacy of power, they destroyed whole cities like Aleppo in their savage pursuit of absolute control. In the end, legitimacy resides in those who can express it, be it a wedding in Kerala or the streets of Homs in Syria. The process of holding power can depend on the social environment and the forms of legitimacy by which power is held and exercised. But in the case of Syria, the historic context divided Shia and Sunni into two communities that held different views of legitimacy and thus separated them into two concepts of how power was exercised as an expression of traditional values.

Of course, Syria is a colonial construction and bears the institutions of colonial rule established in the history of al-Assad and his family connections. The process of disenfranchising people, of creating spaces where no clear means exist for people to determine their own form of living is part of the new urban world. As Hurtado-Tarazona (2019) notes in Ciudad Verde, the horizontal nature of the housing project that she studies and the lack of formal organization creates a vacuum where residents deny one another citizenship based on assumed rights of one group or another. The 'lack of citizenship culture' is one example of this rejection of membership concerning the local street vendors. This is related to the destruction of old sections of cities during modernization or gentrification, with the original population largely left homeless to be incorporated into other sites with separate histories. Indeed, relocation — especially in recent years, as in Libya, Syria and Iraq — but also internal wars — as in Colombia and Burma — are creating a new status. People now find themselves to be natives and citizens of no location, and their status in the camps and temporary housing, from Sweden to South Africa, leads them to conflict with native populations that fear, hate and exploit them. Eviction of whole populations follow, as in the case of the Rakhine in Burma, following a campaign of propaganda that stripped them of their legitimacy as citizens and the subsequent pogrom of terror (Anon. 2012). On the other hand, the undermining of governmental legitimacy in Ukraine led to the ousting of the elected president Victor Yanukovych (Aslund 2003) and his replacement by one of the many oligarchs who have looted the country's assets. As Krase and Krase (2019) note, this process of delegitimizing government can produce complex and confusing local results. Popular movements with local support can be depicted falsely in the media as terrorist and can thus lose their legitimacy not only in a nation's view but also in the eye of their own local supporters. The status of citizen with rights associated to locations is under threat and the attendant transformation is a most worrying trend.

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