

Governmental Intentions Don't Matter for Legitimacy

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Introduction

CLAIM. Grounds on which a political decision might be illegitimate (van der Burg/Brom):

- (1) how it was made;
- (2) for what reasons it was made;
- (3) its content;
- (4) who executes (or authors) it;
- (5) its (foreseeable) consequences.

I will argue that (2) almost never makes a policy illegitimate.

PUBLIC REASON (Rawls). Public reason are reasons that all can reasonably accept. Theories of public reason can be read in different ways:

- (1) It is *good* if states use (only) public reasons when justifying policies.
- (2) Public officials are under a *duty* to use (only) public reasons when justifying policies.
- (3) If (only) non-public reasons have been given for a policy, then it is (pro tanto) *illegitimate*.

I focus only on (3).

My remarks generalise to other theories about “inadmissible” reasons:

If inadmissible reasons have been given for a political decision, then it is (pro tanto) illegitimate.

Motive-Independence in Morality

THE GANGSTER (Parfit, Scanlon). The Gangster considers others merely as a means, always. S/he buys a coffee from Smith “normally”.

Generalising from the example:

Motive-Independence (MI). Whether it is permissible in the thin sense for agent *A* to φ does not depend, in the overwhelming majority of cases, on *A*'s intentions or motives.

Clarifications: (i) “overwhelming majority”, (ii) “thin sense”.

A COMPLICATION. Sometimes an intention makes an action wrong in non-intentional ways. Contrast:

- (a) the Gangster and Mary. A difference in imposing risks, which explains the difference in deontic status.
- (b) the Gangster and mind-controlled Mary. No difference in imposing risks, both impermissible. Intentions are irrelevant for this assessment.

This strategy must be used carefully to avoid begging the question. But often it can be sued.

ARGUMENTS FOR (MI). Most philosophers accept a version of (MI). What would an argument for (MI) look like?

Motive-Independence in Politics

THE BENIGN THEOCRATS. The Benign Theocrats are in power in a democracy, and adhere to the liberal constitution, and its democratic procedures. They legislate a system of social redistribution. (= features (1), (3), (4), (5)) They argue this system is required for various theological reasons. (= feature (2))

ANALOGY CLAIM. Intuitive reaction to the case: the theocratic system of social redistribution is legitimate.

We can now give an explanation why:

permissibility of buying coffee : intentions of the Gangster :

legitimacy of social redistribution : reasons of the Theocrats

Escaping the Analogy?

LEGITIMACY VS PERMISSIBILITY. Legitimacy is the right to rule. Its logic is different from that of permissibility.

Replies. (i) Some (Buchanan, Estlund) see legitimacy as the permission to rule. So do I.

(ii) The possession of a right is not generally lost on the basis of the intentions we have. The Gangster as an army commander.

COERCION. Rulers coerce. A requirement of public reason comes in when we are coerced (Larmore?).

Replies. (i) Coercion raises the justificatory threshold. But why would intentions suddenly come in?

(ii) Example: the Gangster forcefully prevents Green from robbing Smith.

SAYING VS INTENDING. The Gangster merely has bad intentions, the theocrats publicly state them. Consider the honest Gangster.

Replies. (i) Disentangling strategy. The honest Gangster threatens Smith, the Gangster doesn't. Analogies with the theocrats.

(ii) Once we have disentangled, it's not clear our intuitions survive. Modified Theocrats example: a neutral, secular executive.

COLLECTIVE DECISIONS. The Theocrats make a collective decision which concerns everyone. The Gangster doesn't. If we make collective decisions, they must be justified in certain ways.

Replies. (i) It's part of the Theocrats' example that they have respected democratic rights, and that the decision is substantively democratic (if you think there is such a thing). Why would democratic rights require *more*?

(ii) The Gangster is chosen by friends to organise their holidays. S/he organises it very well. S/he acted permissibly.

Concluding Remarks

POSSIBLE REPLIES.

- (1) Look for further ways to escape the analogy. If we can escape it, how we can is by itself interesting.
- (2) Deny (MI) for individual morality. (Kant?)

EMBRACING THE RESULT. How counter-intuitive would it really be?

- (1) It's easy to confuse the reasons behind a decision with the decision itself.
- (2) Different dimensions of moral assessment.
- (3) Legitimacy is a limited dimension of moral assessment.