



Evaluating Governance

Effectiveness and Legitimacy in Areas of Limited
Statehood

Cord Schmelzle



SFB-GOVERNANCE WORKING PAPER SERIES 26 • NOVEMBER 2011

SFB-Governance Working Paper Series

Edited by the Research Center (SFB) 700 “Governance In Areas of Limited Statehood - New Modes of Governance?”

The SFB-Governance Working Paper Series serves to disseminate the research results of work in progress prior to publication to encourage the exchange of ideas and academic debate. Inclusion of a paper in the Working Paper Series should not limit publication in any other venue. Copyright remains with the authors.

Copyright for this issue: Cord Schmelzle

Editorial assistance and production: Anna Jüschke/Katharina Pätz

All SFB-Governance Working Papers can be downloaded free of charge from our website www.sfb-governance.de/en/publikationen or ordered in print via e-mail to sfb700@zedat.fu-berlin.de.

Schmelzle, Cord 2011: Evaluating Governance. Effectiveness and Legitimacy in Areas of Limited Statehood. SFB-Governance Working Paper Series, No. 26, Research Center (SFB) 700, Berlin, November 2011.

ISSN 1864-1024 (Internet)

ISSN 1863-6896 (Print)

This publication has been funded by the German Research Foundation (DFG).

DFG Research Center (SFB) 700
Freie Universität Berlin
Alfried-Krupp-Haus Berlin
Binger Straße 40
14197 Berlin
Germany
Phone: +49-30-838 58502
Fax: +49-30-838 58540
E-mail: sfb700@zedat.fu-berlin.de
Web: www.sfb-governance.de

Deutsche
Forschungsgemeinschaft

DFG

Evaluating Governance. Effectiveness and Legitimacy in Areas of Limited Statehood

Cord Schmelzle

Abstract

While it is widely acknowledged that effectiveness and legitimacy both play an important role in the evaluation of governance, the causal relationship between these two concepts is far from clear. While some theorists hold that there is an inevitable trade-off between the demands of effectiveness and legitimacy, others argue that both qualities are mutually reinforcing. The aim of this paper is to shed light on the relationship between these two standards under conditions of limited statehood. The paper is organized into three sections: In the first section I will define the central concepts of effectiveness and legitimacy. While the main features of the concept of effectiveness are straightforward, the concept of legitimacy is notoriously opaque. In the second section, I will argue that the causal relationship between effectiveness and legitimacy is far more complex than usually assumed. Most scholars describe the connection as a virtuous circle: The more effective a political order or institution is, the more legitimate it is, and the more legitimate it is, the more effective it becomes. While the causal pathway from legitimacy to effectiveness is well understood, this does not hold true for the reverse connection from effectiveness to legitimacy. I will therefore identify four necessary conditions which have to be met in order to make the virtuous circle argument compelling. These are the conditions of (1.) “instrumental legitimacy belief,” (2.) “shared social goals,” (3.) “transparency,” and (4.) “generalization”. Finally, I will argue that these conditions are serious challenges to effective and legitimate governance in areas of limited statehood.

Zusammenfassung

In der Governance-Literatur ist es nahezu unumstritten, dass der Erfolg oder Misserfolg eines Governance-Regimes an seiner Effektivität und Legitimität gemessen werden kann. Weit weniger klar ist hingegen ob, und wenn ja, in welcher Hinsicht beide Kriterien kausal miteinander verbunden sind. Während einige Autoren argumentieren, dass ein unauflöslicher Zielkonflikt zwischen Effektivität und Legitimität besteht, vertreten andere die Ansicht, dass sich beide Qualitäten gegenseitig zu einem Tugendzirkel verstärken. Ziel dieses Papiers ist es, ein neues Modell dieser Kausalbeziehung zu entwickeln und die Konsequenzen dieses Modells im Kontext von Governance in Räumen begrenzter Staatlichkeit näher zu bestimmen. Das Papier ist dabei in drei Schritte gegliedert: Im ersten Abschnitt werde ich die zentralen Begriffe der Effektivität und Legitimität für die Zwecke dieses Beitrags definieren. Anschließend werde ich im zweiten Abschnitt ein komplexes Modell der kausalen Beziehung zwischen Effektivität und Legitimität entwickeln, das auf der Idee des Tugendzirkels beruht, jedoch diese um vier notwendige Bedingungen für eine wechselseitige Verstärkung der Merkmale erweitert. Im abschließenden dritten Abschnitt wird schließlich geprüft, wie sich diese Bedingungen auf die Erbringung von Governance-Leistungen in Räumen begrenzter Staatlichkeit auswirken.

Table of Content

1. Introduction	5
2. The Concepts	5
2.1 Effectiveness	6
2.2 Legitimacy	6
3. The Causal Relationship Between Effectiveness and Legitimacy	9
3.1 The importance of legitimacy	9
3.2 The causal link between legitimacy and effectiveness	11
From legitimacy to effectiveness	12
From effectiveness to legitimacy	13
3.3 Consequences for governance in areas of limited statehood	15
Instrumental legitimacy beliefs	15
Shared social goals	16
Transparency and generalization	16
4. Conclusion	17
Literature	19

1. Introduction¹

The Research Center (SFB) 700 investigates under which conditions governance in areas of limited statehood is effective and legitimate.² Effectiveness and legitimacy are the criteria of evaluation by which we assess the quality of governance. While it is widely acknowledged by political scientists and political philosophers that effectiveness and legitimacy are distinctive concepts that both play an important role for the evaluation of governance, the exact meaning of these concepts, let alone their relationship to each other, is far from clear. While some theorists hold that there is an inevitable trade-off between the demands of effectiveness and legitimacy (Scharpf 1999), others argue that both qualities are mutually reinforcing (Levi/Sacks 2009).

The aim of this paper is to shed light on the relationship between these two standards under conditions of limited statehood. The paper is organized into three sections: Following this brief introduction, I will define the central concepts of effectiveness and legitimacy in a second section. While the main features of the concept of effectiveness are rather straightforward, the concept of legitimacy is notoriously opaque. In the third section, I will investigate the relationship between these two concepts from an explanatory point of view. Here, I will argue that the causal relationship between effectiveness and legitimacy is far more complex than usually assumed. Most scholars describe the connection as a virtuous circle (e.g. Levi/Sacks 2009): The more effective a political order or institution is, the more legitimate it is, and the more legitimate it is, the more effective it becomes. While the causal pathway from legitimacy to effectiveness is well understood, this does not hold true for the reverse connection from effectiveness to legitimacy. In this section I will identify a set of necessary conditions which must be met in order to make the virtuous circle argument compelling. The most important of these conditions is that the addressees of governance hold an *instrumental* conception of legitimacy. Adherents to instrumental theories of legitimacy argue that the capacity to govern effectively is sufficient to confer legitimacy upon an actor, whereas intrinsic conceptions of legitimacy hold that some modes of governance (e.g. democratic governance) are valuable independent of their effects. I will argue that this and some of the other conditions I identify are serious challenges to effective and legitimate governance in areas of limited statehood.

2. The Concepts

To understand the relationship between effectiveness and legitimacy from a causal as well as from a normative point of view, it is necessary to get a clear grasp on both concepts. While the

¹ I would like to thank the participants of the SFB 700 Jour-Fixe as well as Tanja Börzel, Robin Celikates, Fairlie Chappuis, Stephen Krasner and Sophie Perl for extremely helpful comments on an earlier draft of this paper.

² In this paper, I use the terms “governance” and “areas of limited statehood” as defined in the context of the Research Center (SFB) 700 “Governance in Areas of Limited Statehood.” For a discussion of these terms and the underlying concepts, see Tanja Börzel and Thomas Risse (2010).

meaning of effectiveness in political science is quite straightforward, the concept of legitimacy is notoriously opaque and ambiguous. In our framework, effectiveness and legitimacy are two distinct, but interconnected, criteria for the evaluation of governance. While questions of effectiveness are concerned with the *consequences* of governance, legitimacy focuses on the *normative status* of governance regimes.

2.1 Effectiveness

If we ask ourselves how effective a certain political order, institution, or governance regime is, we want to know how well it achieves the goals it was designed to accomplish. A governance regime is at least minimally effective if it has a positive causal impact on these goals. While measuring the causal effect of any given governance regime can be extremely complicated, often involving the comparison to a counterfactual state of affairs without the regime in place (Underdal 1992), the concept of governance effectiveness is more straightforward: Governance is effective if it solves the problems it is intended to solve. Consequently, effectiveness is not an objective category, but depends upon the intentions of the governance actors. In an important sense, it is conceptually secondary to the formulation of policy goals. Therefore, the degree of effectiveness of a given political order or institution alone implies nothing about its moral quality or normative status. The Stasi (the former East German secret police), for example, was rather effective regarding the surveillance and intimidation of the political opposition in the former GDR, but this clearly does not contribute positively to its moral goodness or rightness. Whether the effectiveness of a governance institution is a good thing or a bad thing is fully dependent on the objectives of this institution. These brief remarks may be summarized as follows:

1. What counts as effective governance depends on the ends the governance actors want to achieve. Effectiveness is not an objective category that can be evaluated independently from these goals.
2. Evaluations of effectiveness are therefore temporally and logically secondary to the formulation of policy goals.
3. Effectiveness as such implies nothing about the moral quality or status of governance.

2.2 Legitimacy

To get a clear grasp on the concept of legitimacy, it is first important to differentiate between the *concept* of legitimacy and various *conceptions* of legitimacy. Conceptual questions address the meaning of a certain term, whereas different conceptions state conditions and criteria under which it is adequate to use this term (Rawls 1971: 5). To demonstrate the difference by means of an intuitively clearer example than legitimacy, John Rawls defines the concept of justice

as “a proper balance between competing claims” (Rawls 1971: 9). In contrast to this general definition of the concept, different conceptions of justice determine when this proper balance is reached. They establish, for example, whose claims count, when claims compete, and which balance is proper. In what follows, I am primarily concerned with the meaning of the concept of legitimacy. Different conceptions of legitimacy, such as input and output legitimacy (Scharpf 1999), or charismatic, traditional and legal-rational legitimacy (Weber 1978), will not be discussed at length.

Unlike justice, the concept of legitimacy is infamously obscure. One common source of confusion is its different application in political science and sociology on the one hand, and normative political theory and philosophy on the other hand. Whereas political scientists and sociologists hold that legitimacy refers to the *beliefs and attitudes* of the affected actors regarding the normative status of a rule, government, political system or governance regime (Weber’s famous “*Legitimitätsglaube*”), political theorists and philosophers understand legitimacy as the *actual* normative status of the political order. These differences in usage lead many scholars to assert that there are in fact not one, but two distinct concepts of legitimacy: one empirical (or descriptive), concerned with the attitudes and beliefs of citizens towards their government, the other normative (or prescriptive), concerned with the actual moral properties of a political order (cf. Beetham 1991; Simmons 1999).

I believe that this two-concept thesis is deeply misguided. Instead of speaking of two different concepts of legitimacy, it is more accurate to say that there is an empirical and a normative perspective on the same concept. To my mind this is more apt, since the normative beliefs of citizens and the moral judgments of philosophers refer to the same phenomenon; that is, the term *legitimacy* has the same meaning in both perspectives. Furthermore, the meaning is normative in both cases, since even purely empirical accounts of legitimacy necessarily refer to a normative concept. Consider this pair of statements: “Sixty percent of the German population believe that the European Union is legitimate,” and “Only democracies are legitimate.” The semantic content of the term *legitimate* remains unaffected whether I observe the empirical attitude of the German population towards the EU or make a normative judgment about democracies. In both cases, the term *legitimacy* refers to the normative status of the political order in question. But what exactly do I mean by *normative status*?

First of all, it is essential to note that in this context, normative status means something more specific than morally good or bad, as in “good” or “bad” governance. The term *normative* is used here in a narrower philosophical sense. Normative (or deontic) theory is a branch of practical philosophy concerned with establishing what actors are allowed to, ought to, or must not do (Wright 1963; Raz 1975: 11). Statements about rights and duties, permissions and prohibitions, are normative, for example. One important feature of normative concepts is that they are directly relevant to actions. This sets them apart from evaluative moral concepts such as good and bad, better and worse. It is, for example, not logically incoherent to think that it would be a morally good thing to give ten percent of one’s annual income to charity, but to believe, nevertheless, that one is free to refrain from doing so. In contrast, it is actually incoherent to believe that I am

obligated to pay some percentage of my income in taxes, but to hold nevertheless that I am at liberty to keep the money. In what follows, I will argue that legitimacy is a normative concept in the sense that it shapes the rights and duties of the actors involved.

The normative implication of legitimacy is recognizable in the classical discussion of the concept by Max Weber (1978). Weber argues that legitimacy refers to a relationship of authority (or domination) between rulers and subordinates, which both parties perceive as binding. In contrast to power relationships, such relationships of legitimate authority are genuinely normative (Ball 1993). In the eyes of the subordinates, the rulers have a right to issue morally binding norms, whereas the subordinates are under an obligation to comply with these norms and commands, independent of their specific content.³ This “content-independence” sets legitimacy apart from other non-coercive motives for compliance, such as self-interest and substantial moral approval. Most political scientists working on legitimacy today follow Weber’s analysis. Ian Hurd, for example, defines legitimacy as “the normative belief by an actor that a rule or institution ought to be obeyed” (Hurd 1999: 381). In roughly the same vein, Tom Tyler states that “normative commitment through legitimacy means obeying a law because one feels that the authority enforcing the law has the right to dictate behavior” (Tyler 2006: 4). Legitimacy is an extremely important explanatory category for social scientists, since the belief in the normative authority of a given political order can produce stable compliance without costly enforcement mechanisms. Due to the content-independence⁴ of legitimacy beliefs, this even holds true for policies which conflict with the self-interest or the substantial moral beliefs of the addressees. The belief in the legitimacy of a rule primarily refers to its source and not to its content (Tyler 2006). For this reason, Weber argued that no stable social order could exist without a minimum threshold of legitimacy (Weber 1978: 212ff).

Political theorists and philosophers, on the other hand, understand legitimacy not as the perceived normative status of a political order but as its *actual* normative status. The vast majority of scholars agree that legitimacy can be dubbed as the moral “right to rule” (e.g. Buchanan/Keohane 2006; Estlund 2007; Applbaum 2010). Exactly which rights, obligations and liabilities the status of legitimacy confers on the rulers and the ruled, is a heavily disputed topic that I cannot discuss at length here (cf. Ladenson 1980; Raz 1986; Edmundson 1998; Christiano 1999; Copp 1999; Wellman 2001; Buchanan 2002; Applbaum 2010). Let me just point out, *pace* Ladenson, Buchanan and Wellman, that the normative authority⁵ to create binding rules and commands is to my mind a necessary component of legitimacy. It is this feature which sets it apart from other forms of the justified exercise of coercion like, for example, self-defense (Raz 1986). Furthermore, apart from uncontroversial cases such as self-defense and the defense of others, the ability to create morally valid rules is a necessary precondition for permissibility of coercion (Schmelzle 2011). For the purpose of this paper, I will therefore assume that the

3 Weber’s definition of authority is interestingly similar to Joseph Raz’s work on the concept.

4 For the concept of content-independence see Raz (1975, 1986). For critical discussion see Green (1988).

5 In Hohfeldian terms this authority to create morally binding rules can be best described as a power-right (Hohfeld 1919; Copp 1999).

legitimacy of a political order or institution vis-à-vis its subjects entails that it has the authority to create morally binding rules and decisions, as well as the right to enforce these rules and decisions coercively.

3. The Causal Relationship Between Effectiveness and Legitimacy

The argument in this section advances in three steps. Firstly, I want to explain why legitimacy is such an important concept for the causal analysis of political orders in general, and governance in areas of limited statehood in particular. Secondly, I would like to elucidate the causal relation between perceived legitimacy and effectiveness of a governance regime. Thirdly, I will reflect on the ramifications of this rather complex and demanding causal link for governance in areas of limited statehood.

3.1 The importance of legitimacy

Social scientists often distinguish between three different reasons for compliance with social norms: self-interest, (fear of) sanctions, and legitimacy (Hurd 1999; Wendt 1999; Steffek 2003; Börzel/Panke 2006). Let us call this the traditional triad. Whereas self-interest and (the fear of) sanctions are conceptualized as prudential reasons for compliance, conforming to the so-called logic of consequences, the belief in the legitimacy of governance is seen as a normative reason for rule observance which relies on the so-called logic of appropriateness (March/Olsen 1989, 1998). There are at least two reasons why the traditional triad of motives for compliance might seem unsatisfactory.

The first objection is that the fear of sanctions is only a special case of self-interest and not a self-contained motive. The traditional triad could therefore be considered overly complex and analytically blurry. It could become even blurrier if we, as some scholars do, understand sanctions not only as negative sanctions (i.e. coercion) but also as positive incentives. Without a further argument, the distinction between self-interest and sanctions might appear quite superfluous.

The second objection states that the traditional triad is not overly complex, but rather insufficiently comprehensive, since it misses one extremely common motive for law-abiding behavior: substantial moral agreement with the content of the norm in question. Intuitively, this objection seems correct: It is, for instance, obvious that most people refrain from murdering because they simply think it is wrong to kill innocent people and not because it is in their self-interest or because they are afraid of the attached sanctions. And one hopes, at least, that this conviction is independent of the actor's belief in the legitimacy or illegitimacy of the political order in question. I could imagine that even individuals who believe that their political system is deeply illegitimate, for example a Marxist in the United States or a libertarian in Cuba, would

agree that it is *prima facie* wrong to take an innocent life. If this line of reasoning is correct, then compliance because of substantial moral convictions cannot be a subclass of legitimacy, but is rather a freestanding normative reason for observing social norms.

So what are we to make of these objections? Are there two (prudential and normative), three (self-interest, legitimacy and substantial moral convictions), or four (the traditional triad plus substantial moral convictions) different motives for compliance? I think the correct answer becomes obvious if we make systematic use of the analytical difference between legitimacy and substantive moral convictions. Whereas legitimate political orders, as discussed in the section above, are able to make rules and commands binding, principally independent of their content, compliance because of substantial moral convictions is largely⁶ dependent upon the specific content of the norm in question. This analytic distinction between content-dependent and content-independent motives for compliance not only clarifies the difference between legitimacy and substantial moral beliefs, but also resolves the objection that the difference between self-interest and (the fear of) sanctions is blurry or even superfluous. Analogous to the normative motives, prudential motives can also be differentiated by their content-dependence. Whereas self-interest apart from sanctions (i.e. substantial self-interest) is only a motive for compliance if rule-observant behavior is *in itself* beneficial for an actor, sanctions can be attached to every rule, regardless of its content. If we take the type of reason (prudential vs. normative) and content-dependence as two analytical categories, we obtain the following two-by-two matrix, which will give us a more systematic picture of the reasons for compliance than the traditional triad:

1. Reasons for Compliance

	Dependence	Content-Dependent	Content-Independent
Type of Reason			
Prudential (Logic of Consequences)		Substantial Self-Interest	Sanctions (Coercion, Incentives, Rewards)
Normative (Logic of Appropriateness)		Substantial moral Convictions	Legitimacy

The differentiation between content-dependent and content-independent reasons for compliance helps us to see why legitimacy and the ability to create credible sanctions are essential prerequisites for the stability of every diverse and complex social order. Content-dependent reasons for compliance can secure social order only if the substance of the rules in question is either in (nearly) everyone's interest or if substantial moral convictions converge absolutely. Both cases should be extremely rare. Apart from the marginal case of pure coordination games,

⁶ There are cases where one might think that a specific rule is neither legitimate nor substantially morally right, but non-compliance would be morally even worse because, for example, other people rely on compliant behavior.

like whether to drive on the right or left side of the road, substantial self-interest is a very weak motive for stable compliance. Either there is conflict about the content of a rule, for example in the case of impure coordination games (i.e. “battle-of-the-sexes” scenarios), or individual non-compliance is more rational from a self-interested perspective, for example in prisoner’s dilemma situations. Analogously, near absolute moral convergence is also limited to a small class of policies, and even then it is not sufficient to guarantee universal compliance. This is especially true for modern liberal societies, where people are free to develop diverse moral outlooks and ideas of the good (Rawls 1993). While substantial moral convictions are surely important for compliance with several prescriptions of the criminal law falling under the category of *malum in se*, they are hardly relevant for cases of *malum prohibitum*, for example zoning regulations. And even in cases where we have unequivocal moral reasons for compliance, coercive enforcement is still necessary to deter the small percentage of sociopaths who are not receptive to kinds of considerations. Therefore, either legitimacy or sanctions are necessary for complex governance under conditions of widespread conflict of interests and moral disagreement. Jeremy Waldron dubs these conditions the “circumstances of politics” (Waldron 1999).

The trouble with sanctions as the sole means for compliance is that they are extremely costly, both in monetary as well as in normative terms. Margaret Levi, Audrey Sacks and Tom Tyler observe that:

“Without legitimacy, governments have to expend more resources on monitoring and enforcement to induce sacrifice and compliance. Governments that base their rule primarily on coercion expend enormous resources to create a credible system of surveillance through which to monitor public behavior, reward desired behavior, and punish rule violators. The existence of legitimacy reduces the transaction costs of governing by reducing reliance on coercion and monitoring.” (Levi et al. 2009)

Let me summarize the argument from this section: Given the fact of widespread conflict and moral disagreement under modern conditions, substantial convergence of interests or moral convictions is unlikely, or at least very limited. If social coordination is morally or functionally necessary, political orders need to create content-independent reasons for compliance which at least occasionally motivate the addressees to act against their substantial interests and convictions. Because sanctions alone are unsustainable and normatively problematic, legitimacy is a necessary prerequisite for effective governance in complex and diverse societies.

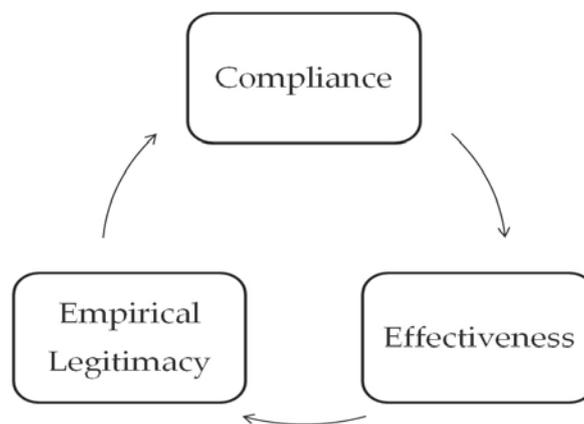
3.2 The causal link between legitimacy and effectiveness

As noted above, social scientists often model the causal relationship between legitimacy and effectiveness as a virtuous circle. The argument is that legitimacy leads to higher levels of compliance, higher compliance increases the effectiveness of governance and greater effectiveness in turn strengthens the legitimacy of the political order. Levi and Sacks, for example, describe this process as follows:

“The more effective [...] the government, the greater the willingness of citizens to accept governmental authority and therefore the greater the degree of quasi-voluntary compliance, which then improves government’s capacity to become more effective and to evoke deference, which in turn increases quasi-voluntary compliance.” (Levi/Sacks 2009)

A schematic illustration of the causal relation between legitimacy and effectiveness according to Levi and Sacks looks approximately like this:

2. The oversimplified virtuous circle model



In this section, I will argue that the causal relationship between legitimacy and effectiveness is much more complicated than traditionally assumed. Whereas the causal pathway from legitimacy to effectiveness is relatively straightforward and well understood, this does not hold true for the reverse direction. I will try to demonstrate that at least four necessary conditions must be fulfilled for higher levels of effectiveness to actually influence the degree of perceived legitimacy of a governance institution. The ramifications of these findings for governance in areas of limited statehood will then be discussed in the following section.

From legitimacy to effectiveness

Before I turn to the complex causal pathway from effectiveness to legitimacy let me quickly elaborate on the link from perceived legitimacy to effectiveness. It is rather uncontroversial that *ceteris paribus* an increased degree of legitimacy will lead to higher levels of compliance, if the norm in question requires compliance at all. However, it is intuitively less clear that higher levels of compliance automatically lead to more effective governance. In section two, we defined effectiveness in terms of goal achievement. A governance regime is effective if and only if it has

some positive causal impact on the objective the regime was designed to achieve. According to this definition, even perfect compliance is not sufficient for effectiveness if the rules complied with have no causal impact on the purpose they are intended to fulfill. Therefore, to establish the link between compliance and effectiveness, we need another necessary condition stating that the rules in question are in principle capable of achieving their intended purpose. This is trivially true in cases where the intended purpose of the rule is identical with the behavior prescribed. Rules against murder and theft, for example, are perfectly effective if no one steals or commits a homicide. If the causal relationship between a prescription and its objective is less definite, or if the balance between competing goals complicates the regulatory efforts – as could be the case for environmental regulations or public health policies – the quality of a rule becomes a crucial condition for effectiveness, even in cases of perfect compliance. Let us call this the condition of “rule quality” and add it to the model above.

From effectiveness to legitimacy

Let us turn now to the more complicated link from effectiveness to legitimacy. I would like to argue that we have to add four more necessary conditions here to make the causal route viable. These are the conditions of (1.) “instrumental legitimacy belief;” (2.) “shared social goals,” (3.) “transparency,” and (4.) “generalization”. Each will be discussed in turn.

(1.) The condition of “instrumental legitimacy belief” states that the effectiveness of a governance institution will only contribute to its legitimacy if the addressees at least partly base their legitimacy beliefs on assessments of effectiveness. In other words, effectiveness must be a part of the addressees’ conception of legitimacy in order to establish a causal pathway from effectiveness to legitimacy. I am not sure how empirically demanding this condition actually is. While most people surely think that minimal effectiveness is a *necessary condition* for legitimacy, i.e. that a political authority’s right to rule depends to some degree on its performance, not quite as many people might think that effectiveness is a *sufficient condition* for obtaining the right to rule. Consider the case of a benevolent dictatorship: It would not be unreasonable to hold that non-democratic regimes are normatively deficient and illegitimate, no matter how effective or even just they are. The same seems true for external and occupational rule. Even if these governance regimes are effective in terms of problem-solving, external rule always seems to be problematic and at best only temporally legitimate (cf. Applbaum 2007; Hechter 2009).⁷ People who hold that effectiveness is not sufficient for legitimacy adhere to an *intrinsic* conception of legitimacy as opposed to an *instrumental* conception. Intrinsic conceptions of legitimacy claim that in order to be legitimate, political authorities need to possess some inherent quality independent of the (likely) consequences of their reign (Schmelzle 2011). These qualities can be procedural, as is the case with democratic conceptions of legitimacy, or they can be identity, as with traditional, religious or communitarian conceptions of legitimacy. If effectiveness is merely a necessary

⁷ I have discussed the normative aspects of external governance elsewhere at greater length (Schmelzle 2011, 2012).

and not a sufficient condition for widespread legitimacy beliefs, the condition of “instrumental legitimacy belief” becomes quite a demanding obstacle for governance actors whose legitimacy is only based on their effectiveness.

(2.) The condition of “shared social goals” indicates that the effectiveness of a governance regime will only increase its legitimacy if the rulers and the ruled share the same goals. To make use of an example from section two, the effectiveness of a secret police force will only increase the legitimacy of the regime if the majority of the population finds it a worthwhile endeavor for a state to spy on and intimidate its citizens. This condition is especially problematic because it implies that effectiveness-based legitimacy beliefs are less content-independent than intrinsic legitimacy beliefs. People who hold that political authorities are only instrumentally justified will only consider them legitimate if they share the same substantial ends. As noted above, under conditions of modern, pluralistic societies, substantial convergence on the ends of governance becomes increasingly rare, beyond basic notions of security, liberty and welfare (Shue 1980). This is especially true for liberal societies, where people are free to develop diverse moral outlooks and ideas of the common good (Rawls 1993). If this line of reasoning is correct, conditions (1.) and (2.) together considerably curtail the policy domain for which effectiveness can contribute to legitimacy.

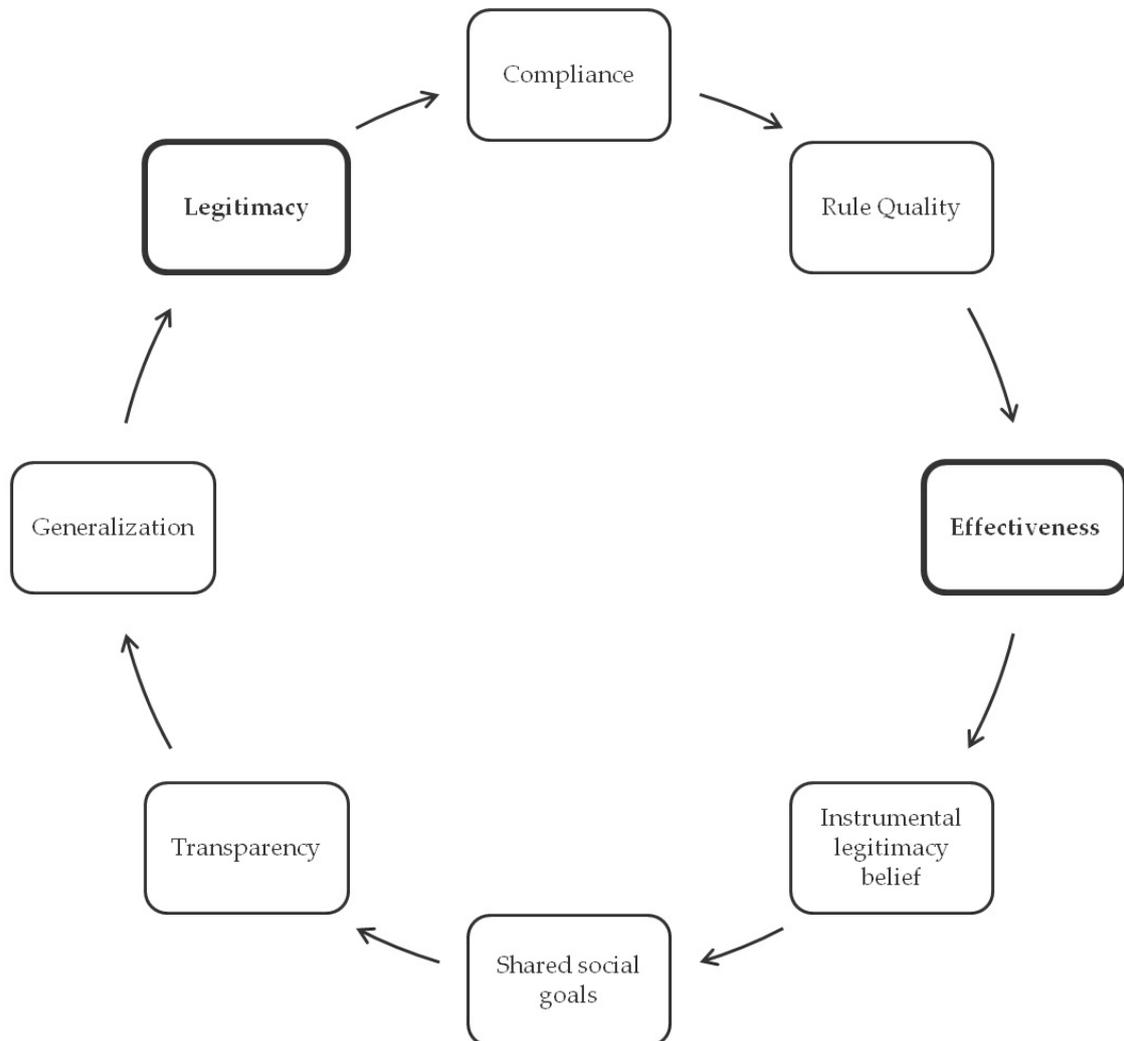
(3.) The third condition, “transparency,” states that in order to transform effective rule into increased legitimacy, the addressees have to be in a position to identify the governance actors responsible and to connect positive results of governance with them. It is a familiar phenomenon from domestic politics that the more complex a problem is, the harder it gets to claim credit or assign blame to certain actors. A lack of this kind of transparency is arguably responsible for the legitimacy problems of the European Union, and, as I will argue in the next section, one possible problem for governance in areas of limited statehood as well. Under conditions of a multitude of governance actors, it becomes increasingly hard to identify the actors responsible for certain results and to grant them legitimacy accordingly. For governance actors, it is therefore advisable to design their institutions in ways that make it as easy as possible to identify their unique contribution. However, given a certain degree of complexity, it becomes virtually impossible to evaluate the individual contributions of different governance actors.

(4.) Finally the condition of “generalization” indicates that in order to make the causal pathway from effectiveness to legitimacy viable, the addressees of governance need to transform their positive experiences in terms of effectiveness with a certain governance actor into an attribute of that actor. In other words, they have to convert their specific support for some policy into general support of the actor responsible.⁸

Taking these necessary conditions together, we arrive at this figure of the now rather complex virtuous circle model:

⁸ For specific vs. general support see David Easton (1965).

3. The complex virtuous circle model



3.3 Consequences for governance in areas of limited statehood

In this concluding section of my paper I would like to connect my findings more closely with the challenges of governance in areas of limited statehood. Given the complex model above, what are the prospects for effective and legitimate governance in areas of limited statehood from a causal as well as a normative perspective? To tackle this question, I will discuss the implications of the necessary conditions identified above in turn.

Instrumental legitimacy beliefs

I think it is pointless to speculate on whether instrumental legitimacy beliefs are more or less widespread in areas of limited statehood than in the OECD-World. However, in contrast to

traditional governance by the state, most of the governance regimes we analyze at the Research Center depend on instrumental justifications, since they are legitimized neither democratically nor on the basis of identity. This especially holds true for governance by external actors. Therefore the condition of “instrumental legitimacy beliefs” is by far more troublesome for governance in areas of limited statehood than it is for domestic governance by the state. One good example is the engagement of external actors in Afghanistan as analyzed by Jan Koehler (Koehler 2011). Even if external actors are rather effective in terms of service provision, the affected citizens still perceive their activities as normatively defective. They hold that it is the job of the Afghan state to provide governance services; external engagement is only tolerable as long as the Afghan state is in absolutely no condition to fulfill its tasks.

Shared social goals

As pointed out in section two, evaluations of governance on the basis of effectiveness are concerned with the consequences of governance in relation to its purposes, whereas questions of legitimacy ask whether governance actors have the authority to set these purposes through binding rules. If governance is solely justified on instrumental grounds, the leeway to set collective binding rules gets drastically diminished, since the affected actors need (at least in principal) to share the definition of societal problems and the goals of the regulations. Otherwise, governance actors have no mandate to regulate, no matter how effective they are according to *their own* assessment of societal problems and ends. For governance in areas of limited statehood, especially by external actors, this means that governance actors should restrict themselves either to the provision of (public) goods without any further regulation – for which they do not need legitimacy – or to policy fields where nearly everybody agrees that governance is necessary, or where strong normative arguments can be put forward that regulation is indispensable. These could include security, basic welfare and liberties, and some system of property rights. In these domains, effective governance actors may still have a content-independent right to rule, but more extensive forms of governance cannot be legitimized on instrumental grounds alone. For governance in areas of limited statehood, this means that it is wise to stick to the effective provision of these essential and rather uncontroversial goods. This is not only advisable to avoid resistance but also preferable from a normative perspective. If there is reasonable substantial disagreement surrounding the ends of government, only democratic procedures can legitimize more extensive regulations. This implies in turn that the advancement of democratic institutions can be a legitimate end of governance in areas of limited statehood, since democratic institutions are the only fair way to decide which more extensive set of governance services is adequate for a given society (Applbaum 2007; Schmelzle 2011).

Transparency and generalization

One of the main structural differences between domestic governance by the state and governance in areas of limited statehood is that in areas of limited statehood there is no actor who

bears the ultimate political responsibility. Given the multitude of actors who are often involved in governance in areas of limited statehood, it can become virtually impossible to ascribe responsibility for good or bad governance to certain actors. One example that comes straight to mind is Haiti, the so-called republic of NGOs. Under these conditions, transparency, generalization, and trust are incredibly hard to achieve. These difficulties point to a usually underestimated argument for the (re-)establishment of stable statehood: By claiming political authority, states simultaneously create unambiguous patterns of political responsibility and accountability. The right to rule is conceptually interwoven with duties towards the governed (Schmelzle 2011). From a normative perspective, these inherent structures of responsibility are one of the most attractive properties of statehood (Ladwig et al. 2007). Only they can make the evaluation of government possible and protest against it meaningful.

4. Conclusion

In this paper I have tried to show that the causal pathway from effective to legitimate governance is far more complex than usually assumed. It depends on a set of four necessary conditions which must be met in order to make the traditional virtuous circle argument compelling. I further argued that these conditions are especially hard to fulfill for governance under conditions of limited statehood. This is particularly troublesome if governance actors depend on effectiveness as their only source of legitimacy. This generally seems to be the case for external governance actors who are legitimized neither democratically nor on the basis of identity. Two consequences of this argument are of particular importance for governance in areas of limited statehood: Firstly, since external governance actors can only draw on a very limited stock of legitimacy, they should restrict themselves to the provision of public goods and the regulation of policy fields where nearly everybody agrees that governance is necessary or where it is morally mandatory. Secondly, domestic political institutions are necessary to legitimize a more extensive set of governance services and regulations for a given society. From this follows that service provision and regulation by external actors is neither a functional nor a normative equivalent to domestic authority. Assisting local actors to (re-)build domestic institutions should therefore be a policy priority for governance in areas of limited statehood.

Literature

- Appelbaum, Arthur Isak* 2007: Forcing a People to Be Free, in: *Philosophy & Public Affairs* 35: 4, 359-400.
- Appelbaum, Arthur Isak* 2010: Legitimacy without the Duty to Obey, in: *Philosophy & Public Affairs* 38: 3, 215-239.
- Ball, Terence* 1993: Power, in: Goodin, Robert E./Pettit, Philip (eds.): *A Companion to Contemporary Political Philosophy*, Oxford, 548-557.
- Beetham, David* 1991: *The Legitimation of Power*, Houndmills.
- Börzel, Tanja A./Panke, Diana* 2006: Network Governance: Effective and Legitimate?, in: Sørensen, Eva/Torring, Jacob (eds.): *Theories of Democratic Network Governance*, London, 153-166.
- Börzel, Tanja A./Risse, Thomas* 2010: Governance without a state: Can it work?, in: *Regulation & Governance* 4: 2, 113-134.
- Buchanan, Allen* 2002: Political Legitimacy and Democracy, in: *Ethics* 112, 689-719.
- Buchanan, Allen/Keohane, Robert O.* 2006: The Legitimacy of Global Governance Institutions, in: *Ethics & International Affairs* 20: 4, 405-437.
- Christiano, Thomas* 1999: Justice and Disagreement at the Foundations of Political Authority, in: *Ethics* 110: 1, 165-187.
- Copp, David* 1999: The Idea of a Legitimate State, in: *Philosophy and Public Affairs* 28: 1, 3-45.
- Easton, David* 1965: *A Systems Analysis of Political Life*, Chicago, IL [1979].
- Edmundson, William A.* 1998: *Three Anarchical Fallacies. An Essay on Political Authority*, Cambridge.
- Estlund, David* 2007: *Democratic Authority. A Philosophical Framework*, Princeton, NJ.
- Green, Leslie* 1988: *The Authority of the State*, Oxford.
- Hechter, Michael* 2009: Alien rule and its discontents, in: *American Behavioral Scientist* 53: 3, 289-310.
- Hohfeld, Wesley Newcomb* 1919: *Fundamental Legal Conceptions. As Applied in Judicial Reasoning*, New Haven, CT.
- Hurd, Ian* 1999: Legitimacy and Authority in International Politics, in: *International Organization* 53: 2, 379-408.
- Koehler, Jan* 2011: Social order within and beyond the shadows of hierarchy. Governance-patchworks in Afghanistan, Paper prepared for International Conference "Governance in Areas of Limited Statehood. By whom, for whom, and to what effect?" Freie Universität Berlin, 26-28.05.2011.
- Ladenson, Robert* 1980: In Defense of a Hobbesian Conception of Law, in: *Philosophy & Public Affairs* 9: 2, 134-159.
- Ladwig, Bernd/Jugov, Tamara/Schmelzle, Cord* 2007: *Governance, Normativität und begrenzte Staatlichkeit*. SFB-Governance Working Paper Series Nr. 4, Berlin.
- Levi, Margaret/Sacks, Audrey* 2009: Legitimizing Beliefs: Sources and Indicators, in: *Regulation & Governance* 3: 4, 311-333.
- Levi, Margaret/Sacks, Audrey/Tyler, Tom R.* 2009: Conceptualizing legitimacy, measuring legitimating beliefs, in: *American Behavioral Scientist* 53: 3, 354-375.

- March, James/Olsen, Johan* 1989: *Rediscovering Institutions. The Organizational Basis of Politics*, New York, NY.
- March, James/Olsen, Johan* 1998: The Institutional Dynamics of International Political Orders, in: *International Organization* 52: 4, 943-969.
- Rawls, John* 1971: *A Theory of Justice*, Cambridge, MA.
- Rawls, John* 1993: *Political Liberalism*, New York, NY.
- Raz, Joseph* 1975: *Practical Reason and Norms*, Oxford [1999].
- Raz, Joseph* 1986: *The Morality of Freedom*, Oxford.
- Scharpf, Fritz W.* 1999: *Governing in Europe: effective and democratic?*, Oxford.
- Schmelzle, Cord* 2011: *Politische Legitimität und externe Herrschaft*, Berlin (Unpublished Manuscript).
- Schmelzle, Cord* 2012 (forthcoming): *Militärische Interventionen, ‚failed states‘, ‚Schurkenstaaten‘*, in: *Lohmann, Georg/Pollmann, Arnd (eds.): Menschenrechte. Ein Handbuch*, Stuttgart.
- Shue, Henry* 1980: *Basic Rights. Subsistence, Affluence, and U.S. Foreign Policy*, Princeton, NJ.
- Simmons, A. John* 1999: Justification and Legitimacy, in: *Ethics* 109: 4, 739-771.
- Steffek, Jens* 2003: The Legitimation of International Governance: A Discourse Approach, in: *European Journal of International Relations* 9: 2, 249-275.
- Tyler, Tom R.* 2006: *Why People Obey the Law*, Princeton, NJ.
- Underdal, Arild* 1992: The Concept of Regime Effectiveness, in: *Cooperation and Conflict* 27: 3, 227-240.
- Waldron, Jeremy* 1999: *Law and Disagreement*, Oxford.
- Weber, Max* 1978: *Economy and Society: An Outline of Interpretive Sociology*, Berkeley, CA.
- Wellman, Christopher Heath* 2001: Toward a Liberal Theory of Political Obligation, in: *Ethics* 111: 4, 735-759.
- Wendt, Alexander* 1999: *Social Theory of International Politics*, Cambridge.
- Wright, Georg Henrik von* 1963: *The Varieties of Goodness*, London.

Previously published Working Papers from the SFB-Governance Working Paper Series

- Börzel, Tanja A./Hönke, Jana* 2011: From Compliance to Practice. Mining Companies and the Voluntary Principles on Security and Human Rights in the Democratic Republic of Congo. SFB-Governance Working Paper Series, No. 25, Research Center (SFB) 700, Berlin, October 2011.
- Draude, Anke/Neuweiler, Sonja* 2010: Governance in der postkolonialen Kritik. Die Herausforderung lokaler Vielfalt jenseits der westlichen Welt. SFB-Governance Working Paper Series, No. 24, Research Center (SFB) 700, Berlin, May 2010.
- Börzel, Tanja A.* 2010: Governance with/out Government. False Promises or Flawed Premises? SFB-Governance Working Paper Series, No. 23, Research Center (SFB) 700, Berlin, March 2010.
- Wilke, Boris* 2009: Governance und Gewalt. Eine Untersuchung zur Krise des Regierens in Pakistan am Fall Belutschistan, SFB-Governance Working Paper Series, No. 22, Research Center (SFB) 700, Berlin, November 2009.
- Schneekener, Ulrich* 2009: Spoilers or Governance Actors? Engaging Armed Non-State Groups in Areas of Limited Statehood, SFB-Governance Working Paper Series, No. 21, Research Center (SFB) 700, Berlin, October 2009.
- Mueller Debus, Anna Kristin/Thauer, Christina R./Börzel, Tanja A.* 2009: Governing HIV/AIDS in South Africa. The Role of Firms, SFB-Governance Working Paper Series, No. 20, Research Center (SFB) 700, Berlin, June 2009.
- Nagl, Dominik/Stange, Marion* 2009: Staatlichkeit und Governance im Zeitalter der europäischen Expansion. Verwaltungsstrukturen und Herrschaftsinstitutionen in den britischen und französischen Kolonialimperien, SFB-Governance Working Paper Series, No. 19, Research Center (SFB) 700, Berlin, February 2009.
- Börzel, Tanja A./Pamuk, Yasemin/Stahn, Andreas* 2008: The European Union and the Promotion of Good Governance in its Near Abroad. One Size Fits All?, SFB-Governance Working Paper Series, No. 18, Research Center (SFB) 700, Berlin, December 2008.
- Koehler, Jan* 2008: Auf der Suche nach Sicherheit. Die internationale Intervention in Nordost-Afghanistan, SFB-Governance Working Paper Series, No. 17, Research Center (SFB) 700, Berlin, November 2008.
- Beisheim, Marianne/Fuhr, Harald* (ed.) 2008: Governance durch Interaktion nicht-staatlicher und staatlicher Akteure. Entstehungsbedingungen, Effektivität und Legitimität sowie Nachhaltigkeit, SFB-Governance Working Paper Series, No. 16, Research Center (SFB) 700, Berlin, August 2008.
- Buckley-Zistel, Susanne* 2008: Transitional Justice als Weg zu Frieden und Sicherheit. Möglichkeiten und Grenzen, SFB-Governance Working Paper Series, No. 15, Research Center (SFB) 700, Berlin, July 2008.
- Beisheim, Marianne/Dingwerth, Klaus* 2008: Procedural Legitimacy and Private Transnational Governance. Are the Good Ones Doing Better?, SFB-Governance Working Paper Series, No. 14, Research Center (SFB) 700, Berlin, June 2008.
- Benecke, Gudrun/Branović, Željko/Draude, Anke* 2008: Governance und Raum. Theoretisch-konzeptionelle Überlegungen zur Verräumlichung von Governance, SFB-Governance Working Paper Series, No. 13, Research Center (SFB) 700, Berlin, May 2008.
- Schuppert, Gunnar Folke* 2008: Von Ko-Produktion von Staatlichkeit zur Co-Performance of Governance. Eine Skizze zu kooperativen Governance-Strukturen von den Condottieri der Renaissance bis zu Public Private Partnerships, SFB-Governance Working Paper Series, No. 12, Research Center (SFB) 700, Berlin, April 2008.
- Trebesch, Christoph* 2008: Economic Governance, SFB-Governance Working Paper Series, No. 11, Research Center (SFB) 700, Berlin, May 2008.

- Benecke, Gudrun/Friberg, Lars/Lederer, Markus/Schröder, Miriam* 2008: From Public-Private Partnership to Market. The Clean Development Mechanism (CDM) as a New Form of Governance in Climate Protection, SFB-Governance Working Paper Series, No. 10, Research Center (SFB) 700, Berlin, April 2008.
- Hönke, Jana/Kranz, Nicole/Börzel, Tanja A./Héritier, Adrienne* 2008: Fostering Environmental Regulation? Corporate Social Responsibility in Countries with Weak Regulatory Capacities. The Case of South Africa, SFB-Governance Working Paper Series, No. 9, Research Center (SFB) 700, Berlin, February 2008.
- Sonderforschungsbereich 700 (ed.)* 2007: Grundbegriffe. Ein Beitrag aus dem Teilprojekt A1, SFB-Governance Working Paper Series, No. 8, Research Center (SFB) 700, Berlin, October 2007.
- Koehler, Jan/Zürcher, Christoph* 2007: Assessing the Contribution of International Actors in Afghanistan. Results from a Representative Survey, SFB-Governance Working Paper Series, No. 7, DFG Research Center (SFB) 700, Berlin, October 2007.
- Schäferhoff, Marco/Campe, Sabine/Kaan, Christopher* 2007: Transnational Public-Private Partnerships in International Relations. Making Sense of Concepts, Research Frameworks and Results, SFB-Governance Working Paper Series, No. 6, DFG Research Center (SFB) 700, Berlin, August 2007.
- Risse, Thomas* 2007: Regieren in Räumen begrenzter Staatlichkeit. Zur „Reisefähigkeit“ des Governance-Konzeptes, SFB-Governance Working Paper Series, No. 5, Research Center (SFB) 700, Berlin, April 2007.
- Ladwig, Bernd/Jugov, Tamara/Schmelzle, Cord* 2007: Governance, Normativität und begrenzte Staatlichkeit, SFB-Governance Working Paper Series, No. 4, Research Center (SFB) 700, Berlin, February 2007.
- Kötter, Matthias* 2007: Der Governance-Raum als Analysefaktor – am Beispiel von „Räumen begrenzter Staatlichkeit“, SFB-Governance Working Paper Series, No. 3, Research Center (SFB) 700, Berlin, January 2007.
- Draude, Anke* 2007: How to Capture Non-Western Forms of Governance: In Favour of an Equivalence Functionalist Observation of Governance in Areas of Limited Statehood, SFB-Governance Working Paper Series, No. 2, Research Center (SFB) 700, Berlin, January 2007. [German version available]
- Risse, Thomas/Lehmkuhl, Ursula* 2006: Governance in Areas of Limited Statehood: New Forms of Governance? Research Program or the Research Center (SFB) 700, SFB-Governance Working Paper Series, No. 1, Research Center (SFB) 700, Berlin, December 2006. [German version available]

These publications can be downloaded from www.sfb-governance.de/publikationen or ordered in printed versions via e-mail to sfb700@zedat.fu-berlin.de.

The Author



Cord Schmelzle is a research associate at the Research Center (SFB) 700 “Governance in Areas of Limited Statehood” in the research project “Contributions to Theory Building.” He holds a Diploma degree in Political Science from Freie Universität Berlin and has been a visiting scholar in the Department of Political

Science at Columbia University. His research focuses on normative theories of international relations, political authority and legitimacy, and theories of governance and statehood. His forthcoming dissertation “Politische Legitimität und externe Herrschaft” (Political Legitimacy and External Authority) addresses the concept of legitimacy and the justification of political authority by external actors.

Contact: cord.schmelzle@fu-berlin.de

Research Framework of the Research Center (SFB) 700

Governance has become a central theme in social science research. The Research Center (SFB) 700 *Governance in Areas of Limited Statehood* investigates governance in areas of limited statehood, i.e. developing countries, failing and failed states, as well as, in historical perspective, different types of colonies. How and under what conditions can governance deliver legitimate authority, security, and welfare, and what problems are likely to emerge? Operating since 2006 and financed by the German Research Foundation (DFG), the Research Center involves the Freie Universität Berlin, the University of Potsdam, the European University Institute, the Hertie School of Governance, the German Institute for International and Security Affairs (SWP), and the Social Science Research Center Berlin (WZB).

Partner Organizations of the Research Center (SFB) 700

Host University:
Freie Universität Berlin



University of Potsdam



German Institute for International and Security Affairs (SWP)



Social Science Research Center Berlin (WZB)



Hertie School of Governance

