

Analysis of the Legitimacy of the Colombian State, an Optics from the Political Power

D. Rodriguez Perdomo¹, L. C. Gallego², Jaime Alberto Páez³, Fredys
A. Simanca H.⁴

¹dario.rodriguezp@campusucc.edu.co

²laura.gallego@campusucc.edu.co

³jaime.paez@campusucc.edu.co

⁴fredys.simanca@campusucc.edu.co

Abstract

This research aims to analyse the criteria of state legitimacy by studying the Colombian case, the factors that have influenced the problems of legitimacy, and the theories with which this legitimacy could be measured; From this perspective, it is important to understand concepts such as the state, legitimacy, sovereignty, political power, among others, all of them from different perspectives, which help to have a much broader vision and to respond to the perception of new realities. , In order to find a solution to this question, the method of hermeneutics is used, a method that will help to interpret the different concepts, in order to have a clear interpretation of the actions of the state in relation to the reality experienced by societies and in particular the Colombian state, its conditions of legitimacy and the different actors that have formed part of or influenced its development and consolidation as a nation state.

Keywords: Political legitimacy; state; laws, institutions; power.

Introduction

There have been several foundations which throughout history have given rise to the justification for society's acceptance of political power, the first of which is undoubtedly due to divinity, i.e. political power has its origin in God, a theory which prevailed for a large part of the Middle Ages, a second foundation rests on the charismatic leader, charisma being understood as a quality which passes for extraordinary (Neitz, 1981). This theory still exists in some contemporary states, and a third foundation is based on legality, which is characteristic of the modern state, the submission of political power to legality, the rule of law. Having exhausted the stage of concern for answering questions about the aims of the state, the questions that it seems to be of interest to answer today are a little broader and are more focused on the

relationship that exists between the state and society, its development, the increasingly demanding need to know how the state has imparted this power, the crises through which states pass, among others; for this it is therefore important to take as a starting point the concepts of legitimacy and sovereignty, among many others.

The origin of the State is a subject that has always been studied within a complex field, both historically and politically; In a first stage, we speak of its constitution as a form of political organization, given by the nature of men, that is, the first forms of organization given in humanity, we also speak of the State as a conception already in the modern age and that it is based on the separation of the church; In any case, in the development of the investigation, it will be pertinent to approach the origin of the State from other perspectives; A reference to take into account is that of the relationship between State and society (Adams, 2018), a relationship that has generated great debates and that precisely generates some of the questions raised above; Regarding legitimacy, it will be necessary to clarify that it is a requirement of political power, since in some way or another the exercise of this requires not being in permanent doubt in its daily life, and to be obeyed without the need to resort to violence.

In a social state based on the rule of law such as the one established by the 1991 Political Constitution, it is essential that in the application of this dogmatic part of the Constitution, the institutions and in general all the organs of the state enjoy full legitimacy, i.e. that the member knows and has clear reasons why the power exercised has full justification; In Colombia throughout history there has been an internal power struggle, with various actors, who in one way or another have questioned the legitimacy of the power exercised by the state, and it is important that citizens understand and accept the reasons why they must obey the state in the exercise of power (Stilz, 2011). Whether the state is applying the use of force to be obeyed or otherwise, this power has the conditions of legitimacy that the associate compliantly obeys it.

The state has the legitimate use of force, but it should be pointed out that the use of force is not a sufficient reason for the maintenance, support and justification of state power, but the state also requires that those to whom the power is directed, i.e. those who obey, have a clear understanding of the specific reasons why they must accept that power, so that legitimacy undoubtedly refers to the reasons why the governed must accept and justify the political power of the state (Nagel, 2017); As mentioned above, there are various bases of legitimacy for political power, divine power, the charisma of the leader, and legitimacy based on the law; currently it is said that subjection to the law is no longer sufficient reason to speak of the exercise of legitimate power, which is why we speak of a state in crisis.

The state is an organisation of political power, and in the exercise of this political power, elements arise, factors such as the responsibility of the state, the citizen's demands on the state, taking over the state or capturing the state, factors that are directly related to the legitimacy of the government, the limits to its actions (Kirchheimer, 2019), the problems it faces in order to be obeyed, all of these reasons, among others, are arguments that justify carrying out a research process that can provide an answer to the question posed above.

It is necessary in Colombia to begin to build an ordered society, founded on a theory of society that is not only adequate, but also coherent with the social reality of the country, a society that allows it to obtain indispensable elements for politics to rethink the role it plays in Colombian society, a society in which the state is clear about the second article of the 1991 Political Constitution, which has outlined the essential aims it has for its associates; It also requires the contribution of various social disciplines that can be useful as tools for the consolidation and construction of a new society, one that, through the implementation of public policies that lead to the strengthening of state institutions, materialises what is set out in the Political Constitution, In the same way, it is necessary that citizens take part in a broad way in decision-making and that the state, in the exercise of its power, be efficient and effective in seeking to satisfy the needs of citizens (Cohen & Fung, 2004), only in this way will the Colombian state exercise power with conditions of legitimacy that allow it to be obeyed in a complacent manner by its members. This article analyses the development and evolution of the concept of legitimacy in Colombia in order to identify the criteria that have influenced and justified the legitimacy of the Colombian state; it also reviews the violent factors that have established power in the Colombian state.

Legitimacy and sovereignty in Colombia 1958 - 2003.

Own Design of Normative Models for Assessing State Legitimacy.

Legitimacy has its origins in two scenarios: a) international, b) domestic, and below is a brief reference to each of them. On the international level, a state is considered legitimate to the extent that it is accepted by the international community, and what forms part of this acceptance is that the state is respectful of international treaties, that it is not an aggressor towards other states, and that its actions are conducive to respect for human rights; In the domestic scenario, a series of factors converge that develop Habermas' idea, which is made up of popular sovereignty and human rights: legitimacy of origin (i.e. the ability to reproduce and transfer power); the creation of a legal structure that allows citizens to have a guarantee that their fundamental rights will be

respected; and finally, the exercise of good governance (Habermas, 1981).

This thesis is based on Chaim Perelman's theory of argumentation, a theory that is based on rhetoric, rhetoric that is based on the support of theses based on reasonable arguments, which must be presented to an audience so that it can assimilate them and debate whether or not they should be established, since under no perspective should they be imposed in a participatory and representative democracy (Perelman, 1976).

However, within the legitimacy of the state, factors such as armed opposition coexist, and the state must act in response to them through the actions of each of the governments in power; In the Colombian case, with the institutionalisation of the country and with the aim of guaranteeing internal sovereignty, it has begun to take decisions to advance dialogue processes with insurgent groups, including making demands on the guerrillas to show their willingness for peace with clear and concrete actions such as the laying down of arms and the handing over of hostages; Within these government policies, principles such as the publicity of these policies are applied, as Habermas states: government policies should be published so that the social conglomerate is fully aware of them and they also serve the government as a means of control and transparency regarding the decisions taken by the government (Habermas, 1981).

In the implementation of these policies by the government, a factor that is fundamental to the legitimisation of a state can be identified, such as the principle of the monopoly of the use of force by the state, i.e., that the state is the only one in charge not only of the use but also of the production of arms, It should also be added that a state whose aim is to achieve a national policy, institutionalisation and recover sovereignty must be present throughout the entire national territory, which also implies the strengthening of some institutions such as the justice system and some control bodies.

With regard to just war as a source of normative legitimacy in a country at war, different theories can be found that take for granted the just or unjust nature of a war. For example, for Pizarro Leongómez, as long as the conflict is of a political nature and has a certain degree of acceptance by the population of the insurgent group, it will have a claim to legitimacy (Pizarro Leongómez. 1996).

For a better understanding of the possibilities of legitimacy of an internal conflict between state forces and an insurgent group, it is necessary to study in detail the normative conditions with which the actors involved in the conflict must comply; to begin with this study it is necessary to know definitions of war, definitions that give us some elements to take into account such as: violence, in a war the central

factor is the presence of violent acts and within the development of this, there are the arguments that pretend in one way or another the justification of committing them, another element is the imposition of the political will by a group to the opponent, that is why it is considered that war could be a continuation of politics but in different arenas or with different means.

The question arises, when can arguments justify a war as just? A reflection of literature defines this from three stages or stages, namely: a) the justice of the recourse to war, i.e. basically the cause of what leads to the confrontation, i.e. what is known as the "ius ad bellum"; b) the justice or otherwise of the procedures in the war, i.e. the conduct of the war, which are those procedures that are used to start the conflict, i.e. what is known as "ius in bello" and c) the justice regarding the termination of the war, once the agreements to end the war have been concluded, known as the "ius ad bellum".

With regard to the issue of the unjust or just nature of a war, it is valid to propose minimum conditions for a state in conditions of internal or external war to be able to invoke the justice of defence against aggression, in the case of a state that is attacked to resort to legitimate defence, otherwise the state would be considered an aggressor or oppressor state.

Force and law - State, power and legitimacy in the 18th Century.

Coup d'état - History of a Concept.

When studying the concept of coup d'état, it should be taken into account that it is a term about which very little has been said, it has been a concept of little study and this is largely due to the conviction that one can have of what a coup d'état is, in the following paragraphs a study of the concept of coup d'état is made based on the theory of Gabriel Naude in the seventeenth century (Rapoport, 2017). The concept of coup d'état refers to an action that is carried out in a violent manner, considered as events that require great audacity and planning time to execute, they are events that do not occur in an ordinary way, on the contrary, a coup d'état has an extraordinary character, of a rapid execution when other instances have already been exhausted by legal means, from there arises precisely one more particularity to take into account in a coup, which is that it is carried out against the legality, that is to say against the law.

With regard to the legitimacy of a coup d'état, what factor should be considered to determine whether a coup d'état is legitimate or not, some authors refer to morality, but for Naude, this cannot be a factor in determining its legitimacy, in contrast, he states that there are some criteria, as he himself calls them, to question the legitimacy of a coup

d'état, namely: a) utility, b) efficacy, as already mentioned, it is an action against the law, that is to say, legal reasons are ruled out altogether, and these would become purely political (Naude, 1964).

The first one is the foundation of a new sovereignty, a theory brought from Machiavelli, a factor in which there is a close relationship between violence and the political foundation, secondly, necessity, which refers to the need to violate the law, This necessity legitimises the coup d'état, in the sense that it allows the state to be re-established when it is threatened, whether by an external or internal factor, and a third is that which is given with the aim of modifying the existing law when it no longer makes the existence of the state viable.

In the 20th century, the concept of coup d'état began to have other connotations, to be composed of other terms and a different vision to that which was already studied; this new concept speaks of appropriation, that is, usurping an authority of a political nature, just like what was studied from Naude onwards, there are also some presuppositions or complements to configure a coup d'état (Suominen, 2021), these complements would be: the first of these has to do with illegality, and as has already been mentioned, it is an act that goes against the law, it violates established rules that determine the means by which power is accessed and the coup d'état resorts to means other than these, means that generally have an implicit violent character, A second complement is that of the illegal conquest of the existing political authority in the state, but as all warlike action against the state must have certain aims, certain purposes, derived from the illegal conquest of political authority, there are certain purposes, among which are logically that of taking power as one's own, to preserve it or to extend constitutional prerogatives.

From the above, it is possible to affirm that a coup d'état will always be linked to illegality, because as we have already said, it is an action that always takes place against the law, by de facto means; consequently, under no circumstances can we speak of a legitimate or legal coup d'état, Although for some authors there may be certain exceptions that could justify the de facto action of those who accede to power, but if access to power is not achieved through the means or mechanisms established in the legal system, then we will always be talking about achieving power by means outside the law, which is different if it is achieved through violence or not. In Colombia, although in a decimated manner, there have been some coups d'état, these were not of great transcendence.

Political violence in Colombia - from the fragmented nation to state-building

The phenomenon of violence in Colombia has been present for decades and has been a preponderant factor in the conformation or construction of the Colombian state. It is important to mention the so-called period of violence in Colombia, in the sense that it refers to the different actors participating in this conflict, which was initially made up of insurgent forces (guerrillas) and the armed forces on the part of the state, but then the AUC (Auto Defensas Unidas de Colombia) joined the conflict, It is also important to highlight how violence in Colombia became territorialised in such a way that there was a macro-national, regional and municipal division, circumstances that made it easier for violence to be more acute in certain sectors, due to the corridors that could be useful for subversive action.

It is important to make reference to the formation of the state and its legitimacy, violence cannot be taken for granted as a fundamental element within the dynamics and development of the state and the exercise of power; systematic acts of violence are not always slightly related to the absence of the exercise of power, contrary to Max Weber's claim that all states have exercised a monopoly of force over all territories that are clearly delimited, but on the contrary, this has been impossible in several states, due to the influence of other factors that exercise power in a violent manner and come to control certain territories, This phenomenon can also occur due to circumstances other than violence, such as the abandonment of certain areas by the state, due to political centralisation. The centralisation of institutions distances the exercise of power and sovereignty by the state over certain regions, without taking into account that the exercise of power and sovereignty for its legitimisation must be accompanied by a cultural and ideological construction (Weber, 2009).

The so-called era of violence in Colombia, unleashed in the 1950s, are events that eventually generated a division of power, a division that established a distance between the social conglomerate and politics, a situation that deepened even further with the entry into force of the national front, a phenomenon of political representation that is considered to be complex within the conformation of the state.

It can be affirmed that the state has not totally lost its monopoly on the use of force; rather, what can be seen are great efforts on the part of the state to achieve expansion and total control over its territory, efforts to achieve social control in certain regions which, due to their geography, are difficult to access and are considered regions far from the administrative centralism of the time, efforts which are the product of internal armed conflicts; The formation of the state is a medium- to long-term process, and the monopoly of force is recognised as an attribution that corresponds to the state.

Derived from the above, it can be concluded that in Colombia there have been various armed powers, which to a certain extent have acted as sovereign powers, and that each of them has acted through the exercise of authority in different ways, with the aim of sustaining that authority, using certain strategies through which they apply central state devices, and it could even be said that each of these powers has had some projects aimed at society based on the interests that each power has according to its ideology and its role within the state.

Based on the above, a review is made of how the formation of a state has been studied, identifying concepts such as hegemony, infrapolitics and resistance, among others, an approach to the study of the Colombian case becomes evident, and how other factors have coexisted alongside the exercise of power by the state in its formation as a nation state, In what way these factors have managed to establish parameters and through their actions set limits to the state's objective of achieving a political and social structure and being able to overcome the violent and arduous conditions that the Colombian state has gone through.

The formation of the Colombian state is not a subject that has been addressed only in the present, but rather, on the contrary, it is a discussion that has been going on for several decades; In the formation of the Colombian nation state, there have been various limitations throughout this process, but these limitations have not only been of a political nature, as factors such as dense geography (Colombia is a country with a fairly complex geography, jungle areas that are difficult to access), other factors that have acted as limitations have been the economy and culture, these elements have disarticulated and generated a fragmentation in society, thus preventing a true nationalist project.

In the process of shaping the Colombian state during the 19th century, there were a series of phenomena that are part of the difficulty or limitations that Colombian society has experienced in achieving true cohesion, within these factors or elements that marked the shaping of the Colombian nation state we find heterogeneity, the imposition of taxes at the local level, as the only way to make a presence in its strategy of centralisation and state expansion, Another factor is that of an elitist and exclusive state with the application of the liberal reforms of the mid-century, which were established in favour of the elite classes and regional powers. The idea of conceiving of itself as an interventionist state did not generate major achievements, since at the regional level the great patricians of the political parties appropriated local power, which conditioned or prevented the presence of the state in the territories over which they exercised total dominion (Uribe, 1987).

It is possible to affirm that some of the limitations in the conformation of the Colombian State could be: the differentiated exercise of power, social inequality, regional power on the part of strong political leaders, these generated great and important consequences that can be seen in

the emergence of the guerrillas, the acute acts of violence in some regions of the national territory, all these and other factors have caused the State to find itself in difficult situations of competition, with the existence of other powers within that have established policies and other models of the Nation State.

Conclusion: The power grab dispute, a constant in the Colombian case

In Colombia, holding political power has generated decades of local disputes, as has already been mentioned. Colombia is a geographically dense country, and this is one of the factors that the outlawed groups have been able to take advantage of, in some cases because there are areas abandoned by the state and this has allowed them to gain ground and expand their capacity for action, and in this way there are many municipalities in Colombia where these groups are the ones who exercise justice, collect taxes and even take charge of providing certain services, all protected by violence; Despite the fact that the state has more powerful structures such as the army and the police, the criminal structures have expanded their radius of action through activities such as violent acts against the civilian population, police stations and commands, drug trafficking and kidnapping, which undoubtedly are activities that generate large sums of economic resources, a factor that gives them power and autonomy of action in their area of influence.

This phenomenon of conflict has been defined by the theory of internal conflict, put forward by Holsti in 1996, who called them "wars of the third type" and refers to the fact that this type of conflict occurs within the communities of the state and questions the role they play in factors such as governance and the state itself, as this leads to the struggle for local power in areas where the state has failed to have a presence and impart power and authority (Holsti, 1996).

In Colombia there has been a whole legion of groups outside the law that have attributed power to themselves and therefore take on parastatal functions over their territory of influence, the conflict is exacerbated by the fact that this legion or fractions of groups outside the law are of different ideologies and are spread throughout the length and breadth of the country, This generates internal conflicts between these independent power groups, but which have their own economic, political and armed structures to exercise power and dominion in each community in which they operate. This is how war leaders emerge who establish illegal parameters for their position on issues such as security, property and community dynamics (Reno, 1997).

There is no doubt that the Colombian state has experienced the phenomenon of internal wars, as Holsti calls it, a struggle for power that has been going on for decades (Holsti, 1996); The FARC guerrilla group is one of the groups outside the law that has manifested this phenomenon

through a project that has gone from the local to the national level, which it demonstrated for more than 30 years with violent acts such as the seizure of municipalities, the blowing up of oil pipelines, miraculous fishing, extortion and kidnapping, all of which took place at the national level under the leadership of its charismatic leader Manuel Marulanda Vélez; The paramilitary groups, led by Carlos Castaño, also fought a great battle for power, but unlike the guerrilla group, through fronts that carried out their activities in specific areas of Colombian territory, and their actions included infiltrating local political spheres, In fact, on many occasions in their speeches and messages, these groups mentioned that they were the ones who held power and were considered the authority in a large part of the country, an argument that was strengthened even more during the so-called zone of détente during the government of President Andrés Pastrana.

Facts such as those mentioned above demonstrate the precariousness of the exercise of power in the Colombian state by the different governments in power, and it must be admitted that the state does not exercise authority in a large part of the national territory, Especially in areas far from the interior or jungle zones, or those that have been important corridors for drug trafficking over the years, areas that throughout history have been focal points of violence in the 50s and 60s and which have remained marked as no-go zones or red zones, which in a way have fragmented the Colombian state, influenced by factors such as those mentioned above.

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