



## Research Article

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# The Issue of Legitimacy of the Political Authority in Modern States

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### Abstract

*The paper examines the problem of the legitimacy of the political authority and provides an adequate response towards the arguments of the political and philosophical anarchism. The proposed definition of legitimacy encourages all people to take part in the political authority and treats all citizens with equality and justice. It is based on the protection of human rights and on the notion of mutual respect of any different view about every aspect of social life in the political community. The solution would be particularly attractive, as it provides a definition of legitimacy which helps to guide a particular authority towards its goal to be legitimate.*

**Keywords:** *Legitimacy, space of justice, space of political authority, philosophical and political anarchism, human rights, criterion of legitimacy*

## 1. Introduction

The legitimization of the political authority is a virtue of political decisions and a prerequisite for the justification of the demand from citizens for obedience and compliance. Legitimacy is a complex subject to examine as it is associated with many controversial issues of the contemporary political philosophy. Some of these issues involve questions such as, what is the context of the notion of legitimacy and how can it be distinguished from other notions of the political authority such as political obligation, political power, legalization and justification of the political power, justification of the state and others.

The research begins with the description of the position of philosophical anarchism and how some modern theorists respond to the issue. In section II, the article draws attention to the necessity of defining under what circumstances a political authority can ever be legitimate. Sequentially, the proposed solution examines the recent objections against political authority and shows how could be refuted. Finally, the importance of the proposed solution is illustrated.

## 2. The Issue of Anarchism

### 2.1 The inseparability thesis

Many political and legal theorists argue that there is no obligation to obey the law of any political authority, thus, no authority should be considered legitimate. That group of theorists founded their assumption on the “inseparability thesis”, according to which if the citizens of a certain state lack the duty to obey the law then this state cannot be legitimate.<sup>1</sup> As long as no one can successfully demonstrate that citizens of a state have a duty to obey all the laws of the political authority, no state can be considered legitimate, or even fully legitimate but only partially legitimate.

Theorists attempt to find the solution through different interpretations of the “inseparability thesis” of philosophical anarchism.<sup>2</sup> They tried to convey that a state may be legitimate even if the citizens do not have an obligation to obey the law. One key position of the argument, is that a state may be legitimate even if the citizens do not have an obligation to obey the law because states are not forbidden to enforce their laws and people will not attempt to do things forbidden by law, even if they do not have a duty to obey what the law requires. (Patrick Durning, 2003, p. 377)

Anarchists have many objections on such an interpretation of the “inseparability thesis”, claiming that there is no sufficient argument to make the authority of a state legitimate, as the authority and the rules it imposes are not morally grounded. They argue that no state is legalized to force its obligations on subjects, because it does not always make decision based on justice and morality. Moreover, no government can claim reciprocation from its citizens because of the benefits it provides to the community, as there is not always political justice to such a relationship between authority and the people. Also, it is not the case that the relationship between the citizen and the authority, can be that of a father-child relationship, nor can it be considered that the citizens consent to the authority because they live in that state. (Simmons, 2002, p. 17-37, 31-35)

Simmons makes the distinction between the legitimization and justification of the political authority, by asserting that those two concepts are independent of one another. The basic distinction lies in the finding that there are examples of legitimate authorities that are not ethically justifiable, others which are ethically justifiable and are not legitimate, and examples where both apply or both do not apply.<sup>3</sup> The notion of legitimization is interpreted by most thinkers as the exclusive right of political authority to be obeyed and recognized, to impose duties and to demand their fulfillment, and to exercise the monopoly of legitimate use of physical force when needed. Regarding this definition, no political authority can be considered legitimate according to Simmons, if it does not have the voluntary participation of all its citizens, in its decisions and commitments.<sup>4</sup> Sequentially, it is clear that no state is legitimate, if it is not fully accepted by all its citizens.

A similar argument is suggested by Edmundson in his article “*Three Anarchical Phantasies*”

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<sup>1</sup> See Patrick Durning, *Political Legitimacy and the Duty to Obey the Law*, *Canadian Journal of Philosophy* 33 (September, 2003): pp. 373-389, p. 374. The term “inseparability thesis” was suggested to the author Patrick Durning, by David Estlund.

<sup>2</sup> See *Ibid.*, p. 374 and In: Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions*, (New Haven: Yale University Press, 1919). “States have rights attributed to them by citizens to act on their behalf securing their life and promoting harmony in the society. All theorists seem to agree with this but they are not unanimously consented regarding which Hohfeldian rights a state should have in order to be legitimate”.

<sup>3</sup> See A. John Simmons, “Justification and Legitimacy,” *Ethics* 109 (July 1999): pp. 739-771, Simmons’ example is enlightening in separating the two concepts. He stated, “In my view even the government of the Third Reich was justified in prohibiting rape and punishing rapists, however illegitimate that government may have been with respect to its subjects and however unjustified was its existence (i.e., however much of an improvement over its rule even the state of nature would have been).”

<sup>4</sup> See *Ibid.*, pp. 770-771. Simmons advocates that the best way to show your consent to the political authority is to be involved in voluntarism actions on behalf of the government. Voluntarism actions would raise legitimate indexes of the government. Government then will easier demonstrate a general right to make laws and enforce them to the citizens.

regarding the right of non-interference with the government's orders. (Edmundson, 1998) If a state is legitimate only if there is a general prima facie duty to obey its laws and there is no such duty then the state's legitimacy is not possible. However, in the case that a state is legitimate if there is a general prima facie duty to obey its laws and its subjects have a general prima facie duty not to intervene with their enforcement, then even if there is no general prima facie duty to obey the laws by citizens, the state can exist or can be actual. Edmundson finds the position of philosophical anarchism to be strong as it comes with a relatively strong thesis regarding political authority and with a relatively strong thesis regarding legitimacy. If there is a different link between the strong position of authority with a modest position of legitimacy through the new proximity thesis, then it results in that which involves a criterion of legitimacy according to which anarchism cannot address an objection. The reason is that the modest position of anarchism as a response to the new criterion of legitimacy is invalid<sup>5</sup>. Nonetheless, the new position that Edmundson concluded, also fails to provide an adequate answer to philosophical anarchism.

According to Durning, Edmundson believes that if the state may be legitimate even if its citizens do not have a duty to obey its laws, then "the right against non-interference does not entail a right to be obeyed." (Patrick Durning, 2003, p. 385) In other words, there is the repeated problem of philosophical anarchism because the state could be actual with the new position that Edmundson suggests, but philosophical anarchism's objection is not fully answered. Edmundson's position does not solve the problem raised by philosophical anarchism's objection but brings it back to the surface, which makes his attempt to provide a solution to the problem invalid. Anarchists continue to wonder what authority is that which has all people do not intervene with the enforcement of the law by the government but refuse to obey.

Applbaum suggested that the enforcement of an authority's legislation does not entail a duty to comply. (Applbaum, 2010, p. 215-39, 220-222) Legitimacy entails that duty and immunity do not fall together. Authority is legitimate without any obligation to follow all the commands of its legislation system. (p. 215) According to Applbaum, "to judge an authority legitimate simply is to judge that the subjects of that authority are morally liable—that is, not morally immune—from the exercise of a moral power to impose and enforce conventional duties and change relevant social facts in ways that change the subject's normative situation. Whether subjects face a moral duty as well remains an open question."(p. 237) Applbaum explains that authority can force people to follow its commands by changing the normative situation of the citizens regarding disputes emerging in their life. The demonstrated ability of the authority is immune to anarchism's objections and, thus, the authority is legitimate without an obligation of the citizens to obey the law. However, anarchists insist on the position that they may not accept the new normative situation the state orders for the same reasons that they deny obeying the law of the authority. Anarchists's position is still dominant as not one theory has yet managed to propose an adequate answer.

Taking into account the problems which the "inseparability thesis" creates, Durning concluded,

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<sup>5</sup> See Edmundson, W.A. *Three Anarchical Fallacies; An Essay on Political Authority* (Cambridge: Cambridge University Press, 1998). :pp. 35-47 In order to avoid the problem of philosophical anarchism, Edmundson analyzes the relationship between the concept of political power and political legitimacy and changes the way that the two concepts are interconnected. His proposal seeks to resolve the problem of philosophical anarchism by widening the limits of tolerance of the criterion of assessing a legitimate political authority. The concept of political authority can be formulated in three different levels: in a strong definition of political authority, in a modest and in weak definition. Similarly, the notion of political legitimacy can be formulated at three different levels, as well as the objection of philosophical anarchism in each case. If the interconnection of the different levels is not consistent with the "warranty thesis" horizontally but a strong level of definition of political authority is intertwined with a more modest definition of political legitimacy, according to a "proximity thesis", then philosophical anarchism can not raise anymore any objection to the legitimization of political authority. In other words, if there is a different combination of these three positions, position of anarchism, authority and legitimacy, with relatively strong or weak theses regarding these matters then Edmundson's position is able to become a valid position and all the objections of anarchism are resolved.

that the major thing is to avoid justifying the assumption that the “inseparability thesis” is true even if it is valid. Such justification would have, “unwarranted inferences and blind us to possibilities that could better describe the moral status of states and the individuals within them.” (Patrick Durning, 2003, p. 387) Moreover, such justification would have negative effects on the state and to the legitimization of the political authority. However, it seems that such a position must not be rejected altogether or should be underestimated. All political views regarding political authority should be considered as valuable and useful tools to guide theorists to explore and suggest new and innovative solutions to any problem. As Durning suggests, definitions of legitimacy should be evaluated according to their usefulness and applicability rather than whether they better describe legitimacy.<sup>6</sup> Furthermore, every position is useful in discovering the truth of every political issue. The usefulness and applicability of each position are two parameters among many others that should be considered in every political discussion.

## 2.2 An appropriate approach

The “inseparability thesis” is based on the assumption that if the citizens of a certain state lack the duty to obey the law then this state can not be legitimate. Anarchists, on the other hand, support that if the citizens have the duty to obey the law then the state is legitimate. However, few citizens have the duty to obey the law in each state so no authority is legitimate. (Patrick Durning, 2003, p. 376) The assumption leads to the question of how can the authority ever be considered legitimate if the anarchists’ assertion is satisfied.

Many theorists attempted to prove that anarchists’ assumption is false and founded their arguments on defending the hypothesis that regardless of whether the people have the duty to obey the law the political authority is legitimate. However, their hypothesis contradicts the anarchists’ position and the result of their attempts has not proved sufficient regarding the issue of legitimacy. Therefore, anarchists continue to raise objection as they have not yet received an adequate answer to the issue.

The thesis of the political and philosophical anarchism<sup>7</sup> remains valid as long as there is no acceptable criterion which shows under what circumstances the political authority is legitimate. If there is a dynamic relation between the law and the legitimization of the political authority then philosophical anarchists have a right to raise their objections regarding the issue<sup>8</sup>.

Manuscript’s argument is based on the assertion of philosophical anarchists which I will try to refute by defining under what circumstances a political authority is legitimate. The suggested solution solves the problem of philosophical anarchists since it explains how their thesis is wrong, solves the problem of the dynamic relation between legitimacy and the duty of people to obey the law and it excludes from the notion of political authority only those positions which are against the authority at all. In other words, the suggestion satisfies any objection of anarchists without separating

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6 See Patrick Durning, *Political Legitimacy and the Duty to Obey the Law*, *Canadian Journal of Philosophy* 33 (September, 2003): p. 375, subnote 4, Durning states, “that theorists may be justified in offering new stipulative definitions of legitimacy but we should see them for what they are and evaluate them according to their usefulness, rather than whether they capture the proper definition of legitimacy.”

7 Note; In the research, philosophical anarchism refers to the school of thought that focuses on intellectual criticism of authority and the legitimacy of governments. On the contrary, political anarchism for the research, constitutes all forms of anarchism that take action in a state in the form of acts of resistance and violence in the field of exercise of political power, including the view that the government should be abolished.

8 See J. Beetham, *The Legitimation of Power* (Basingstoke: Palgrave Macmillan, 1991): p. 19, “Actions of non-cooperation and passive resistance to open disobedience and militant opposition ...will in different measure erode legitimacy, and the larger the numbers involved, the greater this erosion will be”. If this is true then the more people obey the law the greater the legitimacy of the political authority. According to this concept, philosophical anarchists raise their objection because no authority is legitimate if legitimacy is related with the extent to which people comply with the government.

the relation between obedience to the law of a particular political system and the legitimization of the political authority. The possibility occurs because the legal system is not the most important element of the legitimization of the political authority.<sup>9</sup> The manuscript supports that the most important element in the legitimization of the political authority is justice.<sup>10</sup> From the general concept of justice, derives the argument of legitimacy.

### 2.3 How can ever the authority be legitimate

The basic problem is that in a political community there are different conceptions of justice. In every society, there are people from many different comprehensive accounts of good (Rawls, 1993) which results to a pluralism of opinions of what defines justice in different fields of the political society. The result is that there is a competition about which is the best way to decide about the problems and actions of the political system in a particular society and which is the best political authority a society should adopt in a particular place and time.<sup>11</sup> The majority of anarchists are against the government of the state because of their disagreements regarding the best way to organize political authority. An obvious solution is that all those different political views should be accordingly represented in some way in each particular political system. Many political theorists advocated on the issue and suggest

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<sup>9</sup> See D. Copp, *The idea of a Legitimate State*,” *Philosophy & Public Affairs* 28 (1): pp. 3-45, p. 27, *What is adopted by each legal system of a state or what are the essentials of the constitution of each state, are not immune to individuals and unchangeable over time. Copp adds an important dimension to this issue and to the existence of the legal systems and constitutions in states. He stressed that legitimate states have immunity to their rights to rule and these rights can not be violated by any actions of other states or individuals. However if the citizens of a legitimate state vote in referendum to abolish the constitution, they would force the state to abolish its privilege to rule and absorb certain provisos that people demand. Such exceptions to the immunity of a legitimate state raises the question, of under what circumstances would the state be legitimate? (p. 29) and in Hinsch, W. (2008) “Legitimacy and Justice,” in: J. Kuhnelt (ed.) *Political Legitimization without Morality?* (Dordrecht: Springer): pp. 39-52., p. 46. Hinsch also adds an important point on this issue regarding constitution. “This, however, would mean that the most important elements of modern liberal constitutions – the basic political and liberal rights incorporated in these constitutions remain excluded from the processes of democratic decision making and hence out of reach of popular sovereignty.”*

<sup>10</sup> Note; First and foremost, in my opinion, the problem of legitimacy has to deal with the central problem of authority. Authority is faced with two paradoxical phenomena. Morality demands that each person acts with reason under circumstances where they are aware of the balance among the reasons offered to them. However, authority demands from the subjects to act, many times, against their reason or to act without being aware of the reasons applied in each situation. In this way, authority’s submission towards the subjects is irrational and immoral. In addition, authority forces people to take decisions or to act against their own autonomy or will. Moreover, authority forces people to act against their own judgments in relation to all moral issues. The situation becomes very irrational and immoral. See Raz, J. (1979) “Legitimate Authority,” in: J. Raz, *The Authority of Law* (Oxford: Oxford University Press, 2nd ed. 2009), pp. 3-27, p. 4. Raz concluded that political authority is also immoral and therefore it can not be legitimate. Legitimacy of the government of any state should take into account these two paradoxical phenomena regarding the nature of authority. That said, the central idea of legitimacy which I will propose is directly connected with the morality and justice of the authority in society. In order for political authority to be legitimated, it must extinguish its paradoxical phenomena and face citizens with morality and justice. Modern representative democracy has achieved a lot in this field with the foundation of human rights and the democratic procedures of electing the agents of the government. and in Buchanan, A. “Political Legitimacy and Democracy,” *Ethics* 112 ((2002) 4): pp. 689-719, p. 709, “the moral purpose of political power is, first and foremost, to achieve justice; given its coercive and monopolistic character and the fact that it necessarily involves inequality of power, nothing short of this could justify it.”

<sup>11</sup> See Hinsch, W. “Legitimacy and Justice,” in: J. Kuhnelt, ed. *Political Legitimization without Morality?* (Dordrecht: Springer, 2008):pp. 39-52, p. 43. “Given the fact of pluralism, the requirement of public justification means that basic norms of a well-ordered society must secure the consent of citizens whose moral, philosophical, and religious views are at least partially incompatible.”

different political interpretations about the justification of the political authority.<sup>12</sup>

Philosophical anarchism and political anarchism insist on their position that if the citizens of a certain state lack the duty to obey the law then that state could not be legitimate. At first, anarchism's position should be considered as not invalid even if it is against the authority. In this way, the political authority of the state must take into account such assumptions proposed by anarchists in its organization of authority. The aim of the political authority is to include all different positions in the foundation of its legitimacy rather than to try to disregard those views or attempt to offend them. Legitimacy, first and foremost, should accept the position of anarchism by encouraging any position, as part of the exercise of political authority, to have a place for safe and effective expression in any political community. On the contrary, where even one, unique, different position from any cultural or ontological orientation does not find its expression in a state, then precisely for such situations there is a serious issue of non legitimization of the political authority of that state.<sup>13</sup>

The aforementioned approach demonstrates one part of the argument regarding legitimization of the political authority. The second part refers to the inclusion of all different positions regarding the governance of the political authority in the political system of the particular state. The procedure should be defined as the attempt to associate the space of political authority with the space of justice<sup>14</sup> that political community share among its citizens in a particular place and time. The two parts of the argument are the principles of the legitimization of the political authority.

The space of the political authority consists of the legislation system with all the law provisions of the government, the political decisions taken by the authority and all people who take part in the government of the state. On the other hand, the space of justice consists of people and their different views regarding any matter of social life which those people of a particular society share among them in a certain place and time.

*Taking into account the two important principles of the legitimization of the political authority, every government is legitimate if it protects the democratic prerequisite of the non exclusion or elimination of the minority position, of any view, even in its singular expression from just one individuality, and at the same time there is a sincere effort from all in the state to associate the space of political authority with the space of justice that political community share among its citizens. Hence, it is the criterion for the legitimization of the political authority.*

Applying the suggested solution of legitimacy to any political community it becomes obvious that every state must incorporate democratic procedures both for the political authority and its citizens and ensure that there is at the same time protection of the human rights in the society. It is obvious that the first principle of legitimacy illustrates that the application of the death penalty in any state constitutes a failure to legitimize the political authority of that state. Similarly, the deviation from the exercise of the fundamental freedoms of people in the political community, the safeguarding of their personal security or the safeguarding of their property, constitutes a lack of legitimacy of the political authority. Therefore, legitimacy is on the one hand directed connected with the protection of the human rights and the respect of basic freedoms of each citizen.

The second principle implies that in every state there are democratic procedures regarding the involvement of all citizens in the political system of the state and all citizens take part in the

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<sup>12</sup> See Rawls, J. *Political Liberalism* (New York: Columbia University Press, 1993), p. 143. Rawls argues that the best justification of the political authority is accomplished when all people from different comprehensive accounts of good agree about what are the duties and the laws that people are obliged to follow in each political system. He refers to an "overlapping consensus" of reasonable comprehensive views which political authority must take into account when it forms its constitution.

<sup>13</sup> Note; The principle implies that there are democratic procedures in the application of the authority in every state and there is a protection of the human rights. See Buchanan, (2002), p. 718 and in Allen Buchanan, "Recognitional Legitimacy and the State System," *Philosophy & Public Affairs* 28 (1999): pp. 46-78, pp. 46-48.

<sup>14</sup> Note; An example of such a dynamic relationship has historically been the model of the democratic political system. In *Ancient Athenian Democracy*, political authority served justice and operated within the context of a constantly controlled by citizens active interdependence within the context of Participatory Democracy.

governance of the political authority.(Buchanan, 2002, pp. 712-713) Consequently, the second principle is critical for the legitimization of the political authority especially in modern states, where most of the citizens show little or no interest to the governance of their state or they may even turn themselves against the government, much like the actions being held by political anarchism.<sup>15</sup>

The participation of all people in the governance of modern states is of great importance and such an attempt aims to create a bond between political authority and morality as the connection has been lost and therefore there is a lack of legitimacy of the political authority. In modern states, people elect their agents through democratic procedures, but once they are elected, citizens are not aware of the decisions of the government or the legislation system adopted. The huge gap between the government's decisions and citizens' beliefs<sup>16</sup> is one of the greatest problems of modern states and constitutes a huge problem that is partly responsible for the lack of the legitimization of the political authority.<sup>17</sup> The argument is often used by anarchists to argue that the political authority is alien to the majority of citizens and thus there is great inequality between people who rule and people who are obliged to obey.<sup>18</sup>

The second principle also conveys that the legal system is not the most important element of the political authority. The justice which people share among them in a particular community is what plays the most important role in the political authority. The major question is how the view of political justice which people seem to adopt in a particular society could be incorporated into the political system of the state. Although there are numerous solutions, the association of political power with the space of justice could be achieved by ensuring a better and more participative citizenship, with the continued exchange of citizens taking up the most valuable political positions in the government, with constant and direct conversation about basic issues that concern society, with the involvement of all citizens in voluntarism actions<sup>19</sup>, and with the reform of the entire education system. The latter should prepare the society and create citizens capable of developing such a possibility of associating the space of political authority with the space of justice in the political community.

### 3. The Suggested Solution and the Issue of Legitimacy

#### 3.1 Reply to the anarchism's objections

*The suggested solution states that a government of a state is legitimate if it protects the democratic principle of the non exclusion or elimination of the minority position, of any different view, even in its*

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15 See Beetham, (1991), p. 19. "Actions of non-cooperation and passive resistance to open disobedience and militant opposition ...will in different measure erode legitimacy, and greater the number involved the greatest the erosion will be."

16 See Ibid., p. 75. "A similar gap between rules and beliefs can develop, conversely, through the attempt to impose or introduce new rules of power in a context where the appropriate beliefs are lacking: a representative democracy in a society which is highly traditionalist in orientation or a Marxist-Leninist regime in a deeply religious society. All these are examples of what can be termed a legitimacy gap or deficit."

17 See Jean-Jacques Rousseau, "The Social Contract," in *The Great Legal Philosophers Selected Readings in Jurisprudence*, ed. Clarence Morris (Philadelphia: University of Pennsylvania Press, 1959), 213-235. "The people of England regards itself as free: but it is grossly mistaken: it is free only during the election of members of parliament. As soon as they are elected, slavery overtakes it, and it is nothing."

18 See McLaughlin, P. *Anarchism and Authority: A Philosophical Introduction to Classical Anarchism* (Aldershot: Ashgate, 2007), 96. "Anarchists argue that the authority of the state, representative or otherwise, is always alien, and that there is an inevitable inequality between those who rule in the state and those who are ruled by it. Thus, political equality is unrealizable in the state."

19 See Simmons, (1999), p. 771. In subnote 69, Simmons advocates that the best way to show your consent to the political authority is to be involved in voluntarism actions on behalf of the government. These voluntarism actions would raise legitimate indexes for the government. Government will then become more able to demonstrate a general right to make laws and enforce them to the citizens.

*singular expression from one individuality and, at the same time, there is a sincere effort from all in the state to associate the space of the political authority with the space of justice that the political community shares among its citizens.*

According to the suggestion, political anarchism is firstly not excluded from the political system and its position regarding political authority is considered to be under discussion along with all other positions regarding political authority. However, political anarchists, if they want to support their assertion regarding political authority should get involved with the actions of the government and fulfill their obligations towards the government. In other words, they should be established as a democratically expressed group, within the framework of the state mechanism.

According to the principle, there is no theoretical position regarding the political system which is invalid in the place of political authority. Thus, every action which is out of the space of political authority is invalid and so all actions of anarchists against the government are excluded from the political system. Political anarchists must not be anarchists if they want to make their voice heard and their opinions valid, and therefore there is no longer a problem of political anarchism to threaten the legitimization of the authority. Also any actions from political anarchists against the government or the life of other citizens which include violence are excluded from the political system according to the first principle of the definition of legitimacy which presupposes the protection of the human rights of all within the political community.

When supporting their position regarding the political authority, anarchists advocate that if no authority exists it is better and more just for the society than when there is authority. The definition of legitimacy which has been suggested provides an adequate answer to the political anarchism's objection as it is founded on the notion of political justice and considers all people as equal and free members of the political community.

The legitimacy of political power is enhanced when the political power is supported by a greater variety of different opinions of people in the political community. This is the productive role of the minority groups who, if they join the political power, support and strengthen with their existence the role of the majority and the stability of the state. Under these conditions, the legislative system and political decisions are supported by more people from different comprehensive accounts of good, which makes the legitimization of political power stronger<sup>20</sup>.

According to philosophical anarchism, if the citizens of a certain state lack the duty to obey the law then the state cannot be legitimate. According to the second principle of the definition, people in the political community must become involved with the government's activity and support the state if they would like to take part in the political community.<sup>21</sup> People who have no duty to obey the law are not members of the political community. In this way, political authority faces no problems regarding philosophical anarchism. Not one citizen in the political authority is without the duty to obey the law.<sup>22</sup>

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<sup>20</sup> Note; Regarding the relation between diversity and the majority position in a political community see also David B. Hershenov, "Two Epistemic Accounts of Democratic Legitimacy," *Polity* 37 (April 2005): pp. 216-23.

<sup>21</sup> See Morris Morris, *Political Legitimization without Morality*, in: J. Kuhnelt (ed.) *Political Legitimization without Morality?* (Dordrecht: Springer): pp. 15-32, p. 25. Morris states that, "If a state is legitimate, it has a right to exist and a right to rule. If a state possesses weak or basic legitimacy then subjects have an obligation (and a pre-emptive reason) not to undermine the state and to support it in various ways."

<sup>22</sup> See Massimo Renzo, "State Legitimacy and Self - Defence," *Law and Philosophy* 30 (September, 2011): pp. 575-601, p. 597. Renzo explains that, "Therefore, those who object that states can perform their functions effectively (thereby successfully achieving their goals) without subjecting everyone to their authority, cannot claim at the same time that an adequate theory of legitimacy should account for universality. For there is no reason to require universality, if not that having independents would be an obstacle to the state successfully achieving whatever aims justify its existence". My interpretation of Renzo's assumption is that all people have a duty to obey the law, as is also according to my criterion of legitimacy. If some people deny to subject themselves to the authority, due to their beliefs or views towards the authority, then this is a citizens' choice that the political authority must take into account. People who deny to subject themselves to the authority must in turn find the way to incorporate their view within the authority and the authority has an obligation to accommodate it. In this way, as the definition of



In the case that philosophical anarchists insist on the position that there are violations of law and so political authority is not legitimate, the definition of legitimacy deal adequately with this objection. According to the suggestion, maybe there are some violations of the law by citizens without any problems incurred regarding the legitimization of the authority. The definition of legitimacy is not based only on the legal system<sup>23</sup> of the state, and therefore no appeal can be raised from philosophical anarchism on the issue.<sup>24</sup>

In addition, if there are violations of the laws in the state, the government is not illegitimate. Government is not more or less legitimate according to the definition of legitimacy. The investigation confirms that as the two principles are fully applied to the political system of the state the government is legitimated. If there are some violations of what the principles presuppose then the political authority is not legitimated. Therefore there is not a dynamic relation between legitimacy and the adoption of the law in the political system which gives an adequate answer to philosophical anarchism's objection regarding the issue. Clearly, the adoption of the law refers to both principles of legitimacy. The part of the law which refers to the protection of the human rights of the citizens is included in the first principle, while the second principle includes the part of the law which refers to the procedures and the democratic functions of the government required to take into account the different positions of the citizens regarding political authority. The other laws in the state are affected by the legitimization of the political authority, but they are not responsible for the non legitimization of the government.

On this point, It may be argued that the line of distinction is not between justice and law, as other theorists evaluate in their efforts to defend the authority against anarchists' objections. Applbaum suggests that the legalization and the justification of political authority are independent concepts.<sup>25</sup> The prior research has proven that legalization is part of the space of justice. Legalization has its origin in the ethical system which the political community shares among its citizens. The law attempts to protect the basic principles that the political community serves. Those principles are primarily principles of justice. The philosophical anarchists make a great mistake when considering all the laws in the political community in their argument. There are laws that protect some values of justice and laws that protect other values. The law which philosophical anarchists are interested in, is not just any law, but the law regarding the legitimization of the political authority.<sup>26</sup>

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*legitimacy entails, no people remain outside the space of the political authority and therefore all play an important role to the organization of the authority. If the state is able to function without the obligation from all people to take part in the political system, then there is a great possibility that many useful views regarding the government are excluded from the space of the political authority.*

*23 See Beetham, (1991), p. 68. "On its own however, legality cannot provide a fully adequate or self-sufficient criterion of legitimacy."*

*24 Note; The central argument stresses that the legalization system must be included in the space of justice that people share among them in a particular society at a certain time.*

*25 Note; In one of the examples Applbaum uses, a motorist may go through a red light and be arrested and forced to pay a fine or may not consider it right to pay at all. In one case, the motorist, in his original decision to drive through red does not violate any moral obligation but violates a specific road traffic code. But if he refuses to pay the fine, then he is morally condemned and his behavior can not be accepted. Also, if not caught, he will have violated the road traffic code to drive through red, but his action will not be unethical. However, such an interpretation underestimates the ethical power of the legislation system in the society. My opinion is that all issues regarding the law have its origins to ethics and justice. If the traffic code prohibits to drive through red traffic lights then there is an ethical reason first and foremost, the reason being to avoid causing an accident and killing people.*

*26 See Morris, (2008), p. 25, "The obligation to obey the law is more demanding than that not to undermine the state and to support it; it is to conform to each and every law that applies to one. Consider the examples of infractions of the law that have no adverse effects that are now standard in the literature - for instance, failure to come to a complete halt at stop signs on deserted roads in the countryside. Or think of violations of more misguided laws - for example, US laws forbidding young people from drinking alcohol before the age of 21 (even, in some states, in the company of their parents). Failure to conform with the law in such cases would not undermine the state, even if it would violate an obligation."*

The definition of legitimacy indicates that the law which protects the two basic principles proposed is fundamental in the legitimization of the political authority. Equally important, is that the law which refers to the protection of the two principles of legitimacy is created by all people in the political community who share different comprehensive accounts of good and therefore adopt different views regarding political justice. Anarchists should be encouraged to take part in the legislative process. The law which protects the political system and the basic principles of the legitimization of the political authority, is the only law which must not be violated in any occasion. Philosophical anarchists must then make alterations to their objection regarding the distinction that is proposed, between all the laws in the political system and the law which refers to the legitimization of the political authority.

The law which protects the principles of the non exclusion of any different view in the political system and supports the association of the space of political authority with the space of justice must not be violated. If there are violations of the law of this kind, then there is problem in the legitimization of the political authority. Also, as the first principle demands, the minorities must be protected even if they amount to only one single person. If there are any discriminations of the law, it must be for the benefit of the minorities in the political system.<sup>27</sup> Only then, the legitimization of the political authority is able to become a reality and therefore applicable.

Taking all investigations into account, the philosophical anarchists' objections regarding the legislation system become invalid. The definition of legitimacy provides an adequate reply to their position and also secures legitimacy with even stronger law provisions regarding the issue.<sup>28</sup> The legislation system proposed is unchangeable over time and all people must support it in any given place and time.

### 3.2 *The importance of the suggested criterion of legitimacy*

The proposed solution of legitimacy is characterized by objectivity, stability, usefulness and applicability in any given occasion. The application of the definition of legitimacy proves that there is no problem caused by the objection of anarchism for the existence of the state, as it provides an answer to the objection for the necessity of the state or why the state exists.

The suggestion answers the questions of the justification of the state and the legitimacy of the political authority, and also indicates which state we must live in.<sup>29</sup> The appropriate state, is the one which supports and respects the basic principles of legitimacy. Nevertheless, it might be the case that different comprehensive accounts prevail in the space of justice in each political community over a certain period of time. Citizens are responsible to choose the best way to organize their political authority and how their political system can better serve their needs.<sup>30</sup> The process, is derived from the second principle of legitimacy proposed. However, the most important step in any such process, is the application of the two principles of legitimacy in every occasion.

Tyrannies, for instance, are not legitimate political authorities as they do not satisfy the second principle of legitimacy. Since they use violence, they are more distant to what the criterion of

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<sup>27</sup> Note; My suggestion is that minorities should select the law provisions which best protect them in the political community. Democracy must give this possibility to minorities to involve themselves in the legislative procedures which are for the benefit of their group and protect their life in the society. To the extent that there are such provisions in the legislation system of one state then this state has a legitimate political authority.

<sup>28</sup> Note; The legislation system of this kind consists of the "overlapping consensus" of the different comprehensive accounts of people in the political community.

<sup>29</sup> See Simmons,(1999),p. 758. Rawls argues that justification of the state is not so important as we refer to people already living in civilized societies under a political authority. The real question for Rawls is not why the state but under which state we must live.

<sup>30</sup> Note; My suggestion may not be the only one on this issue. However, I believe that Representative Democracy satisfies the first principle of legitimization while Direct or Participatory democracy satisfies the second prerequisite of a legitimate political authority.

legitimacy entails because they do not satisfy the first principle of legitimacy. Many governments face such problems in the process of legitimization of their political authorities. The most important is that such political systems are excluded as legitimate political systems of government<sup>31</sup>.

For those reasons, it is impossible for an illegitimate state to have a legitimate political authority because for the illegitimate state there is no space of justice according to which an authority can be justified.<sup>32</sup> The opposite is possible because for a legitimate state there is a space of justice where an illegitimate authority could claim justification for a certain period of time. The study proves that if there is no such justification the illegitimate authority falls outside the space of justice of that particular community and it is soon replaced by a new political authority which is closer to the goal of its government to be legitimate.

This is particularly important because it satisfies the objection of many anarchists that there are governments that are illegitimate but morally justified, or legitimated but not justified. (Simmons, 1999, p. 747) The plausible explanation is that such governments are not legitimized but claim legitimacy. The main problem for such forms of political authorities is that if they fail to achieve the necessary association between the space of political power with the space of justice, they will soon be replaced by other forms of authorities that obey to the criterion of legitimacy.

#### 4. Conclusion

In this article explored the most important concerns regarding the issue of philosophical anarchism and how some modern theorists respond to this issue. Then the necessity of defining under what circumstances a political authority is legitimate was evaluated. Finally, the research attempted to illustrate how the proposed definition of legitimacy can resolve the problem of political anarchism and provide an adequate answer to the problem raised by philosophical anarchism. Moreover, the importance of how the criterion of legitimacy could be useful was stressed: how close or how distant the political authorities are to the goal of their government to be legitimate.

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<sup>31</sup> Note; In contrast, in several of the contemporary theories of legitimation of the political authority this possibility of separating or excluding such political systems does not exist.

<sup>32</sup> See *Ibid*, p.747. As Simmons states, a "legitimate State might have an illegitimate government (one that, say, acquired its power by force rather than by trust), an illegitimate state could never have a legitimate government since illegitimate states do not possess the rights, transferred to them by their subjects' consents, that must be entrusted by a state to a government in order to legitimate that government."

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