

EGPA 2021 Conference



RESILIENCE AND AGILITY OF PUBLIC INSTITUTIONS IN TIMES OF CRISES



PANEL 3 | LEGITIMACY, TRUST AND LEGALITY IN TROUBLED TIMES

Friday, 10 September 2021 from 11.00 to 12.30

Venue: Auditorium Drion – R42.5.503 - Solvay Brussels School of Economics and Management (SBS-EM)

[Zoom Meeting Room](#)

Invited speakers:

Prof. Emmanuel Slautsky (in presence)

Center for Public Law, Université Libre de Bruxelles and affiliated researcher, Leuven Center for Public Law (KU Leuven)

Prof. Rahel Schomaker (Virtual)

German University of Administrative Sciences Speyer, Germany

Moderation

Shéhérazade Semsar-de Boisséson (in presence)

CEO of SSB Corp. Belgium, Advisory Board Member and former CEO of POLITICO Europe

In the current COVID crisis, government measures have generated praise and criticism; they have led to demonstrations, referenda, court orders, media frenzy, political and policy adjustments, and management difficulties in a considerably faster and more acute manner than in ordinary times¹. How will societies and governments emerge? What are the links between social and institutional resilience, and the related concepts of legitimacy, trust, political support, legality? Legitimacy especially seems a key point in assessing the future of our societies. Legitimacy is not just about the measures taken and their effects, but also the processes through which they were designed, and legitimacy of the public organizations and institutions themselves.

Legitimacy based on principles and processes has been made especially visible through legal challengesⁱⁱ. Among them, the tension between the extraordinary measures implemented by most governments, and the constitutional safeguards already present in extant law. How did states address the situation in legal terms? Beyond COVID, how did governments deal with legal challenges that emerged from other crises?

While legal aspects are especially relevant for grasping procedural aspects of building legitimacy, they aren't limited to the courts. Governments have other means of building "throughput legitimacy"ⁱⁱⁱ such as participation or at least public debate, representation, openness (in data, decision processes, etc.). These means are both important and challenged in periods of urgency.

Strictly communicative aspects are also very important. Government communication has often failed, right from the start of the epidemic in China. The media amplified anxiety, but also found themselves caught between supporting governmental public health communication and reflecting public doubts and distrust in what the WHO called an "infodemic"^{iv}. Social media and the "big tech" IT industry play an ever-increasing part in communicating knowledge and the legitimacy it implies.

Finally, legitimacy comes not only from persuasion and fair processes, but also from services and their outcomes. Results-based reasoning has become a routine in public administration and management, but it has been severely tested in the face of uncertainty and, sometimes, incapacity.

SUGGESTED TOPICS FOR THE SPEAKERS

The speakers are invited to present, in turn, a 15-to-20-minute summary reflection of their work and experience on the above matters. After their presentations, it is suggested that the discussion proceeds based on the following questions, and others from the audience. As an experienced journalist, the moderator will add a more substantial point of view about communication and media topics.

1. Does a crisis reinforce government legitimacy? What has been the effect of the pandemic, or other crises, on the legitimacy of governments (in international comparison) and on various parts of governments?
2. Legitimacy is not monolithic. For example, more local and operational institutions are generally trusted better than more remote general government institutions. Are some institutions structurally more (or less) legitimate? Is there an interplay, as when some institutions are necessary to legitimize others?
3. Are some institutions more sensitive to the loss of legitimacy than others? Can institutions be legitimate but not trusted?
4. Did the growing involvement and visibility of experts increase or decrease such legitimacy?

5. What is the role of the media on issues of public legitimacy? And on institutional resilience? Again, are there differences between the short and long term?
 - a. To what extent do mainstream media have a social responsibility, for example in promoting public health measures, or pro-social (pro-governmental?) behaviour? How do journalists perceive “the general interest” vs. audience opinion?
 - b. How did mainstream media perform under the circumstances, given the dilemmas they face?
 - c. How has the rise of social media and big tech changed this picture?
6. What is the relationship between legitimacy and delivery, or quality of service? Is there a decisive effect of good service on legitimacy? Were there cases where service failures had a lasting effect on political support, legality, or legitimacy? After the observed breakdown of resilience, what has been the response?

ⁱ Although it might be argued that crisis management or even crisis fabrication has become a fixture of present-day governments. See Mark Rhinard, ‘The Crisisification of Policy-Making in the European Union’, *JCMS: Journal of Common Market Studies* 57, no. 3 (2019): 616–33, <https://doi.org/10.1111/jcms.12838>; Donald Moynihan and Alasdair Roberts, ‘Dysfunction by Design: Trumpism as Administrative Doctrine’, *Public Administration Review* 81, no. 1 (2021): 152–56, <https://doi.org/10.1111/puar.13342>.

ⁱⁱ Patricia Popelier et al., ‘Health Crisis Measures and Standards for Fair Decision-Making: A Normative and Empirical-Based Account of the Interplay Between Science, Politics and Courts’, *European Journal of Risk Regulation*, 15 June 2021, 1–26, <https://doi.org/10.1017/err.2021.7>.

ⁱⁱⁱ Vivien Schmidt and Matthew Wood, ‘Conceptualizing Throughput Legitimacy: Procedural Mechanisms of Accountability, Transparency, Inclusiveness and Openness in EU Governance’, *Public Administration* 97, no. 4 (2019): 727–40, <https://doi.org/10.1111/padm.12615>.

^{iv} WHO, ‘Managing the COVID-19 Infodemic: Call for Action - An Ad Hoc WHO Technical Consultation’ (Geneva: World Health Organization, 8 April 2020), <https://www.who.int/publications-detail-redirect/9789240010314>.

Speakers:

Emmanuel Slautsky is a Professor of Public and Comparative Law at the Université libre de Bruxelles and an Affiliated Researcher at the Leuven Center for Public Law of the KU Leuven. Emmanuel studied law at the Université libre de Bruxelles (2008) and at the University of Oxford (2009). He obtained his PhD from the Université libre de Bruxelles in 2016. The topic of his PhD was the impact of European Union internal market law on the administrative organisation of the Member States. Emmanuel has been a visiting scholar at Sciences Po Paris (2014), at the University of Oxford (2014), at the KU Leuven (2016-2017) and at University College London (2019-2020). In 2017-2018, Emmanuel worked a postdoctoral researcher at the KU Leuven with a project on the accountability of independent regulators. Emmanuel’s current work focuses on the Europeanisation of

public law, the regulation of the network industries and the transformations of administrative law. He is also the Belgian rapporteur for the Lex-Atlas: Covid-19 initiative, a global academic project mapping legal responses to Covid-19.

Rahel M. Schomaker is a professor for economics and public administration at CUAS Villach, an adjunct professor at the German University of Administrative Sciences Speyer and a senior fellow at the German Research Institute for Public Administration. Her main research interests concern administrative change, formal and informal public sector cooperations and networks, crisis governance and trust. She is currently involved in several research projects funded under the EU Horizon-2020 program. Her work has appeared in leading public administration and economics outlets, and she serves as a senior advisor for administrative reform for the OECD and different national governments.

Moderator:

Shéhérazade Semsar-de Boisséson was the publisher and owner of *European Voice*, a publication she bought from The Economist Group in 2013. In January 2015, POLITICO and Axel Springer acquired *European Voice* and DII and she was appointed CEO of POLITICO Europe, a position from which she stepped down at her request in June 2021. She is now CEO of SSB Corp. Belgium which she founded in 2013 and has been providing strategic advisory for corporations for now over eight years. Shéhérazade served on the Board of Directors of Georgetown University from 2013 to 2019. She is serving on the Advisory Board of Georgetown Institute for Women, Peace and Security and Georgetown University's School of Foreign Service.