

Legitimate Decision-Making in Times of Crisis

Participants and Abstracts

Tom Nichols

“Expertise in a Time of Crisis”

Who makes decisions, and about what, in times of crisis? What kind of balance should we seek between experts, policymakers, and the public in resolving crucial matters while under pressure? And how did we come to a situation where so many voters regard any form of organized decision-making to be illegitimate if they disagree with the outcome?

Thom Brooks

“A Matter of Principle: Leadership in Crisis, in Times of Crisis”

Times of crisis pose serious challenges to 'business as usual'. Standard procedures for decision-making might appear inadequate and not up to the challenge. This paper sees this challenge manifested in different options. The first option is to claim emergency times require cutting corners and, in particular, cutting out others. Maximum flexibility is valued in the interest of expediency. This the option of the executive. A second option is to claim so high a threshold for what might count as an 'emergency' that it is avoided. Consistency and steadiness in the face of threats is most valued. A third option is to claim times of emergency call for *more* scrutiny, not less. It accepts there can be departures from the norm in a crisis with the need for more swift and flexible responses. But it challenges the preconception that maximum flexibility must be paid for by the price of less scrutiny. But, in a crisis, the outcomes of decision-making are perhaps never more important. All affected have an increased interest in getting it right. It will be argued that in such times more collaboration among stakeholders - following the principle of those who have a stake should have a say on outcomes - in a more intent fashion to maintain, if not elevate, the evidence-led scrutiny of decision-making is the preferred way forward. Legitimate decision-making should be more rigorous in crisis than in 'business as usual'. Examples will be drawn from university responses to the Covid-19 pandemic showing the different models of leadership on display - and how cutting corners does not better connect with best outcomes, nor outcomes carrying the most confidence. And yet these are both extra vital - getting the right decisions and getting confidence in the decision-making process - that a more collaborative stakeholder approach to leadership embodies as the preferred third way.

Veronique Champeil-Desplats

“About Justifications for the use of states of emergency in France (2015- 2020)”

I would like to participate by speaking more specifically about the inadequacy of justifications that were given to the declarations of the state of emergency in France between 2015-2017 and 2020, and the problems of legitimacy of the decisions made during the Covid crisis in France. I propose then to think about what could be a better decision-making process.

Santiago Mejia

“Democratic Legitimacy: Which Duties of Beneficence Should Elected Officials Fulfill on Behalf of Citizens”

At the heart of the notion of representative democracy is the idea that there are certain individuals (elected politicians) who act as agents or trustees of principals or beneficiaries (voters). The main responsibility of elected representatives is to pursue the wishes of agents and/or promote the interests of beneficiaries. If we only focus our attention on how the interests of voters should be promoted, however, we fail to properly register that their representatives are not only meant to promote their interest but also to fulfill some of their moral obligations. The question I want to explore in the conference is which are the kinds of moral duties that elected representatives should fulfill on behalf of voters. To narrow my attention I will focus specifically on duties of beneficence.

Fabienne Peter

“What makes political decisions legitimate?”

A longstanding tradition in political thought holds the view that the source of political legitimacy is some form of democratic control or, more generally, the will of the people. But recent political developments are putting some pressure on this view. It is thus timely to consider alternatives. Historically speaking, the main alternative is the view that decision-making power should rest in the hands of those with an ability to make the right political decisions. In my talk, I will consider both options and argue that each has its problems. I will present a third alternative, which supports certain constraints on democracy.

Commentator: Alec Walen

Cindy Holder

“Public Decision-making and the Logic of Governance: Taking the Collective Dimension Seriously”

Decision-making by public officials is a species of collective decision-making. But who is the collectivity making the decision? In this paper I argue that the collectivity a public official participates in when making a public decision is the government or some sub-section of it. Sometimes it is suggested that the relevant collectivity in a public official's decision is "the citizenry" or "members of the polity". However, most of the people to

whom a public official's decision applies do not have the right kind of relationship to government or to the public agency within which the official is located to be plausibly described as participating in it. Even on a fiduciary model of public decision-making, which might be plausible as a mechanism for ascribing responsibility for public officials' decisions to the citizenry, the citizenry is not characterized as part of the collectivity that makes a decision but as a different collectivity for whose sake the decision is made.

Identifying the collectivity that acts in a public official's decision as the government or some sub-set of it is important in cases where a public official's decision is challenged and/or when those to whom a decision applies. When the collectivity in which a public decision-maker participates is acknowledged to be the government, attention is directed to what the official's reasoning reveals about how they conceive of their role and what they take good government to consist in (including what and who they take government to be for). The salient questions then become whether the conception of good government than a particular public official's reasoning reveals accurately or genuinely reflects the government's reasons, and whether the government's reasons are compelling or even morally defensible for those to whom its decisions apply.

Christopher Morris

“Different Conceptions of Legitimacy”

I propose to address some of the questions about legitimate decision-making in times of crisis by examining the implications of some normative accounts of legitimacy. I start by looking at “sociological” accounts, popular in politics and the social sciences. The concerns here seem to be ones having to do with loss of popular support and low level of trust in government. What we might call normative accounts of legitimacy tell us what conditions must obtain for a state or its government to be legitimate and what powers might they possess if they meet those conditions. I shall then try to determine the implications of a particular account of “weak” legitimacy for decision-making in times of crisis. I shall argue that the conditions for legitimacy offers some guidance here.

William Tullius

“Edith Stein on the Problem of Political and Ethical Legitimacy in States of Emergency: Lessons from Weimar for Political Responsibility in the COVID-19 Era”

Edith Stein submitted her phenomenological study *An Investigation Concerning the State* in 1924, a year after Hitler's failed Beerhall *Putsch* and the collapse of the German economy, and four years after the end of the fourth and final wave of the Spanish Flu in Germany. Her work is thus very much intended as a philosophical response to a time of political, social, economic, public health, and especially moral crisis. This paper will endeavor to apply lessons from Stein's theory of legitimacy, community, and value to the unique moral challenges represented by the COVID-19 pandemic, social unrest, and refusal of cooperation with efforts to flatten the curve.