All Power Stems from the People
A critical study of legitimacy in 1:1 of the Instrument of Government in the Constitution of Sweden

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Degree Project Essay (30 credits)
Jurisprudence
Fall, 2008
1 Introduction and Aims

1.1 Abstract

The very first article in the *Instrument of Government*\(^1\) – the primary act of the Swedish Constitution, that is to say: the first article of the most quintessential set of regulations in Swedish law, decrees that “all public power in Sweden proceeds from the people.”\(^2\) However, even in the following article\(^3\), there is a regulation which expresses that the explicit purpose for this power is to ensure the freedom of the individual.

Given these premises, an archaic jurisprudential contradiction is elucidated: the power of one actor, per definition, limits the power of another. And by the process of popular representation, the power of the given individual is limited by the power of the people as a common, as exerted by the parliament. As such, this displacement of power creates certain difficulties:

a) *If the individual dignity and freedom is pivotal, how do you ever legitimize its compromise?*

b) *Since the individual is born into this system, how is this coerced cooperation legitimized?*

c) *If this system is insurmountably illegitimate, how come it functions in actuality?*

d) *With the further displacement of power constituted by the membership of the European Union, how extensive can the displacement of power be before it is completely illegitimate?*

If there is one premise to keep in mind, it is that the increase in power of one actor equates the decrease of another’s. Therefore, the dichotomy of individual and common interests stand in direct conflict. Whereas “the principle of popular sovereignty is elicited through the proclamation that all public power stems from the people”,\(^4\) this communal power, will undoubtedly inhibit that of the individual, who is obliged either to obey or to suffer the consequences. That this phenomenon can never be entirely legitimate, so long as the individual is the basic value of society, is the thesis of this paper. Furthermore, it will be asserted that in any homocentric society, there can not be an alternative to the individual as a fundament for any justification.

Initially, a few key-terms must be investigated further. Thereafter, an abridged history of Swedish legitimacy will function as a prelude to the contemporary model used in Sweden. The historical perspective will facilitate an understanding of the contemporary conditions in Sweden. Subsequently, the Swedish model with its intrinsic predicaments will be investigated and evaluated in accordance with current theoretic models of legitimacy for exertion of power. This will scrutinize different paths for validation and for disapproval of the Swedish model of legitimacy.

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1 Henceforth referred to as the Instrument of Government, IG, or simply the Constitution.
2 IG 1:1
3 ibid., 1:2
4 Holmberg, *Our Constitution*, p. 42
Thereafter, the Swedish model, with its solutions and challenges, will be contrasted with
the European model under whose jurisdiction the Swedish populace has subjected itself and
the subsequent impact on the Swedish model will consequently be examined. This chapter
will function as a means to conveying how a greater displacement of power, away from the
individual, equates a greater illegitimacy in any system built upon the notion of the individual
as supreme.

Finally, an examination of why the Swedish model remains intact will be prompted, after
which a comparison with models of other countries and a conclusion will ensue.

1.2 What is Power?

The view on power, as complex a notion as it is, is traditionally divided between a liberal and
a structural stance.5

On the one hand, the liberal interpretation, as presented for instance by Robert Dahl
focuses on the notion of influence, which is defined as “a relation among actors such that the
wants, desires, preferences, or intentions of one or more actors affect the actions, or
predispositions to act, of one or more other actors”.6 It is important to keep in mind that this
influence is not merely physical force, but also persuasion, attraction etc.

When regarding power, Dahl claims that it is the source of great influence. As such, the
state, through its monopoly on physical force or power, is a particularly important source of
influence. Therefore, Dahl claims: “when an actor controls the state, he is able to execute his
decisions vis-à-vis the state. Or more concretely: he is able to utilize the state’s monopoly on
physical force”.7 It is this kind of power that this essay is concerned with, disregarding the
state’s ability to persuade or lure, the kind of power pivotal to our questions is that of force;
“Forceful influence: influence based on the threat, or the eventuality, of exceedingly severe
punishments or bereavement, especially physical torment, torture, prison and death”.8 The
state’s power, is therefore per se, a phenomenon which stands in direct opposition with the
individual’s freedom and in this mutual dependency, one can only increase one’s power at the
expense of another’s.

On the other hand, the structural approach strongly contradicts the liberal theory of the
individual as inherently free. Instead, thinkers like Antonio Gramsci imagined them as always
influenced by power in a hegemony of one sort or another. People’s “behavior is not
independent and autonomous, but submissive and subjugated”.9 The exertion of power is
subsequently inevitable. A postmodernist thinker, like Michel Foucault would assert a
synthesis of liberal and structural, where power is omniscient, but where the individual can,
and must, rebel at all times.

This paper will be written on the liberal assumption, that external power can be avoided
and that the individual’s freedom would be absolute without the interference of the state,
wherefore the structural and the postmodernist outsets are superfluous and will be considered
only where necessary.

To explicate further, Kenneth Boulding presented a notion of power based upon three
subdivisions; the stick (brute force, i.e. a prison sentence), the kiss (appeal, i.e. the
advertisement on a billboard) and the deal (persuasion, i.e. a business contract).10 This paper
will concern itself with only one type of power, with force; with the stick.

5 Carbin, Texts in Contemporary Political Theory, p.19
6 Dahl, Modern Political Analysis, p. 32
7 Carbin, Texts in Contemporary Political Theory, p.25
8 ibid., p. 25
9 Gramsci, A Selection of the Prison Note-books of Antonio Gramsci, p. 327
10 Bäck, Swedish Politics, p. 13
1.3 What is Legitimacy?

If power is an intricate concept, then *legitimacy* is perhaps even more so. The fundamental connotation for this essay however, is justification. This is to say: when the state, through the parliament, exercises power of the individual, how is this defensible? How is this justified?

The German sociologists Hubert Heinelt and Michael Haus offer a particularly illuminating model. Their precept suggests that *legitimacy* is based either on *input*, *output* or *throughput*. A *legitimacy of input* derives its justification from citizenry participation i.e., it is the most reminiscent of the Swedish claim of *legitimacy* in 1:1 of the Constitution; the use of power is legitimate if the people consent to it. A *legitimacy of output* is more concerned with the ability to solve any given problem; the use of power is legitimate only if the results are enviable. This model is not separated from the Constitution, as some crucial objectives and ambitions are expressed within the Instrument of Government. Finally, a *legitimacy of throughput* is based on the opportunity for the individual to overlook the process of action and to assert liability upon those accountable; the use of power is legitimate only if the use can be supervised and amended when needed.\(^\text{12}\)

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11 ibid., p. 23  
12 ibid., p. 23
2 Evolution of Legitimacy and the Mandate of Power in Swedish Law

Below, a brief chronology will function as a means to convey a historical perspective of legitimacy in Sweden, which subsequently explains how the current model came to be what it is today.

2.1 Dogmatic Legitimacy

In a discourse of Sweden as a historical entity, an appropriate outset is the era of the Vikings (between the ninth century and 1066 A.D.), when Sweden, as a somewhat coherent unit materialized. Now, contrary to popular belief, the Viking society did not entirely consist of a strict regimen of pillaging and plundering, but rather it carried fragments of the social and juridical order of today. The Vikings too, had a system for justification or legitimacy of any given action. The Vikings’ solution was to live and act in accordance with a Viking code, Franklin Scott explains:

The code of life of the Vikings was different from that of either the Byzantines or the west Europeans, far different from the Christian ethic. But it was a code based on a well-thought-out rationale, and it fitted the conditions of the times. This code emphasized the rights and responsibilities of the individual and his dignity as a person.\(^\text{[13]}\)

The core of the Viking code was consequently a warranty for the privileges and the responsibilities of the individual, which is very reminiscent of the modern, homocentric or egocentric perspective on the law. However, this aforementioned warranty was less of a purpose in itself, but rather a means to achieving a dogmatic fate, to “the realization of the foreordained purpose of a man’s life”\(^\text{[14]}\). This is to say, whereas the egocentric aspect tends very contemporary, still the archaic notion of predestination has long since been superseded.

If the Viking paganism contained elements of a dogmatic legitimacy, the Christian doctrine that followed was one of complete dogma. Any decree was considered inherently justified, by virtue of its divine origin, namely God. Paradoxically, the law came to promote some very modern institutions. Scott elaborates:

The laws that were written down showed, however, a different emphasis from the law of the early Vikings… Slavery disappeared, and every man already equal before God now tended to find legal equality with his fellow man as well… Hence the principles of Christianity and canon law and the regulations of a Christian state were blended in the newly written law with the age-old tradition. Gradually new ideals were established of equality before the law, security for the individual and reconciliation in place of revenge.\(^\text{[15]}\)

At the birth of Sweden as a modern state, at the coronation of Gustav Vasa in 1523 A.D., the paradigm of public power stood before an imminent transformation. Vasa was to deprive the church of much of its power, only to consolidate his own. However, the alteration of power, from clergy to monarch, did not necessitate a change in legitimacy.

\(^{13}\) Scott. <i>Sweden The Nations History</i>, p.30
\(^{14}\) ibid., p.31
\(^{15}\) ibid., p.62
The source of legitimacy remained unaffected, as Vasa claimed his mandate to be divine, much like the church always had. For centuries yet, the Swedish monarchs would entitle themselves “King by the grace of God”. However, an era of reform was not only inevitable, but as will be shown, impending.

2.2 Social Legitimacy

In the 17th century, a shift in the paradigm occurred. No longer was the dogmatic legitimacy adequate to justify the absolute power of royalty or clergy, whose mandate came to be severely questioned.

One of the first to question this order was Thomas Hobbes, who propagated a fundamentally dyadic choice for the human being; the natural state and the social. In his magnum opus; Leviathan, he described the natural state as “solitary, poore, nasty, brutish and short”, which was the reason for man to form societies and abide by rules given to facilitate the interaction of the respective individuals. Accordingly, the individual had to renounce the freedom she enjoyed in the state and was coerced to adhere to the common will. Legitimacy was hence founded on the individuals’ preference for safety over freedom, a thought not too distant from our modern jurisprudence.

During the succeeding period; the enlightenment, the French philosopher Jean-Jacques Rousseau, elaborated on Hobbes’ idea and developed the notion of a social contract wherein he supposed the individual to have bound herself to the responsibilities of society in order to enjoy its privileges. His stance on capital punishment illustrates this social reciprocity: “it is only to avoid falling victim to an assassin that the individual acquiesces to death, should she herself become one”. In spite of his belief that all people carried intrinsic rights, these could be infringed upon, so long as this infringement was a result of the general will.

Concurrently, the institution of a modern Swedish Constitution was on the rise.

2.3 The development of the Swedish Constitution

Even from the birth of the written, Swedish legislation, one perpetual principle is discernable: “The country shall be built by law”. The quote is taken from the law of Uppland and dates back to 1296. Throughout Swedish history, this principle was pivotal; still the many adaptations of legislation, including the national law of Magnus Eriksson, were inadequate as Constitutions, at least in the modern connotation of the word.

The first document, even comparable to a Constitution of modern standards was that of Axel Oxenstierna’s in 1634, composed largely of regulations on public service. It did not contain rules regarding the parliament, which subsequently found it difficult to compete with the increasing power of the Carolingian kings.

Only after the death of Charles XII in 1718, effectively ushering in the period of freedom in Sweden, was this discrepancy of power tended to. A new Constitution, in 1719-20, was scripted specifically to contravene the monarchic supremacy and “power was divided in the new Constitution, between the king, the council and the parliament”. As such, the paramount measure towards modern legitimacy had been taken; the involvement of the people upon whom the power was ultimately exerted.

With the say of the parliament guaranteed, the influence of the popular opinion was augmented exponentially, which would eventually spark the counteraction of the loyalists. In

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16 Bäck, Swedish Politics, p.21
17 Hobbes, Leviathan, p. 186
18 Rousseau, On the Social Contract, p. 49
19 Wacks, Understanding Jurisprudence, p. 24
20 Petersson, Sweden’s Constitutional Documents, p. 11
21 Möller, Swedish Political History, p.19
1772 King Gustav III executed a coup d'état wherein he seized power and ultimately inaugurated a Constitution reinstating supreme power in the monarchy.

Much like earlier drafts of the Constitution had come as reactions, so was the Constitution of 1809 in effect a reaction to prior legislation and was meant largely to exonerate earlier inaccuracies. The Constitution was based on the, at the time very acclaimed, principle of separation of powers, as formulated by Charles-Louis Montesquieu. The basic concept was that “all exertion of power – whether by a tyrant, a parliament or the people as a whole – tend to lead to the abuse of power and corruption, unless balanced by some form of counter-power”. 22 This seemingly outdated Constitution was to last for more than a century and a half, and when Swedish society developed to levels incompatible with the Constitution, the Swedish simply chose to ignore it.

In 1974, the new Swedish Constitution replaced one of the most obsolete in the world, second in age only to the American. The ground-breaking innovation, insofar as legitimacy was concerned, was the legislation of, and consequent consolidation of the popular sovereignty, which had already been in effect for decades. The adage of 1809: “The King alone shall rule the nation”, 23 was replaced by: “All public power proceeds from the people”. 24

Simultaneously with the legislation, the people experienced a change in preference and outlook on society. From having been a hierarchical people, the Swedes came to favor individualism. 25 Henry Bäck uses the Grid constructed by American sociologist Aaron Wildavsky, to explain how this change in paradigm altered the Swedish attitude from “they decide what we should do” to “I decide what I want to do”. 26

Wildavsky’s Grid-matrix:

<table>
<thead>
<tr>
<th>Low ‘grid’ [low dependency on rules]</th>
<th>High ‘group’ [high connection with other citizens]</th>
</tr>
</thead>
</table>
| Low ‘group’ [low connection with other citizens] | Individualists:  
I decide what I want to do | Egalitarians:  
We decide what we should do |
| High ‘grid’ [high dependency on rules] | Fatalists:  
They decide what I must do | Hierarchs:  
They decide what we should do  
We decide what they should do |

(Bäck 2007)

Paradoxically, the Swedish people have continuously been one of an “apolitical culture” with a continuous “citizen passivity”, 27 inclined to respect authority. It would appear as though the Swedish populace is perfectly content with a delegation of its freedom, so long as this subsequent inhibition is not too exaggerated. This passivity plays a key role in the Swedish system, as will be proven.

Furthermore, another key element in the Swedish demographic is the notion of reciprocity or agreement. This equates a particularly high threshold for acceptance and for stability in the balance between state and individual. As will be demonstrated, this is one of the paramount features of the Swedish model.

22 ibid., p. 21
23 Petersson, Sweden’s Constitutional Documents, p. 195
24 ibid., p. 356
25 Bäck, Swedish Politics, p. 31
26 ibid., p. 31
27 Möller, Swedish Political History, p. 34
3 The Swedish Model – “All public power proceeds from the people”

In this chapter the current Swedish model, such as it is, will be presented. It is against the background of its actual properties and the somewhat contradictory motives that the dilemma of legitimacy in Sweden will be elaborated.

3.1 The Gateway Paragraph – Chapter 1, Article 1

1 § All public power in Sweden proceeds from the people.
Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. It shall be realized through a representative and parliamentary polity and through local self-government.
Public power shall be exercised under the law.

3.1.1 The Individual as the Source of Legitimacy

That all public power stems from the people signifies that the popular representation i.e. the state, is nothing more than an advocate of its individuals and as such, all legitimacy must likewise stem from the people; from the individual.

The axiomatic stance on this source of legitimacy is crucial for this thesis. Any assumption herein will fundamentally rely on the claim that the individual is the superlative value of this world, and that the state is nothing more than the collectivity of said individuals.

To support this further, the Swedish government, in one of its reports has expressed this same notion with reference to the subsequent article of the Constitution. It claims that “every human being carries the same worth and that worth is not to be compromised”.

3.1.2 The Individual as a Purpose Herself

Given how the power belongs to the people, the question of what the power is to be used for is elicited. As early as in the subsequent article, just mentioned, the most crucial motive for this power is alleged. In chapter 1, article 2, the following is to be found:

2 § Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person.
The personal, economic, and cultural welfare of the private person shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public institutions to secure the right to health, employment, housing and education, and to promote social care and social security.

Thus, the dichotomy of the common and the individual is elucidated and their innate contradiction, so critical to this essay, is illustrated. For none but the individual herself is fit to assess her needs satisfactorily enough, and when one individual is guaranteed a right, this specific right is taken from the market, from all other individuals. This will be elaborated shortly (in chapter 3.1.3).

Momentarily, let us delve deeper into the manifestation of this incongruity within the legislation. In the preparatory comments, two particularly illustrative quotes are uttered:

28 IG 1:1
29 SOU 2000:1, p. 17
30 IG 1:2
“Regarding the representative system, it was asserted that it is necessary for management of reciprocal matters”\(^{31}\) and: “Concerning the political freedoms and rights, it was asserted that these are to be considered requirements for the social order”.\(^{32}\) As such, we find that on the one hand there is a necessity for some superior institution (the state) so as to facilitate individual interaction with other individuals. On the other hand, the individual herself is paramount and must not be compromised unless absolutely necessary, if at all.

When discoursing legitimacy, the question is this: If individuals, by capacity of human beings, carry a given set of undeniable rights, how can a state, which limits rights, be justified? Some may answer that the state’s function is to assure these rights. Still, as will be explained shortly, even the assurance of someone’s rights, is the hindrance of someone else’s.

Admittedly, the suggestions for the Constitution did not contain the same explicit or extensive catalogue of individual rights as does the de facto Constitution.\(^{33}\) However, they do express the underlying ambition for it; “it is only natural for the reform of the Constitution to incorporate by law regulations on the citizenry freedoms and rights”.\(^{34}\) Furthermore, this shortcoming was vindicated shortly, with an ensuing expansion of said catalogue, as early as in 1977.\(^{35}\)

Consequently we may infer or at least surmise the purpose of the state to be to tend to the needs of its individuals.

### 3.1.3 The Contradiction of Individual and Common Interests

Now, having previously perceived the purpose for the power to be the individual, the question is prompted of what justifies such an extensive source of power as a state constitutes, where the power is displaced, away from the individuals themselves.

The contractual theory of Jean-Jacques Rousseau labels the dilemma thus: “The individual will strives, by nature, for benefits, the common for equality”.\(^{36}\) The excerpt clearly illustrates the dilemma of coordinating the respective individual preferences within the restrictions of the common will. The cause hereof is constituted by a simple, yet axiomatic truth; any restriction, as well as any privilege, indubitably represents a limitation of the individual freedom. This means that states not only ensure rights, but limit them as well.

To demonstrate this further:

Regarding the case of a restriction, the limitation is evident. For instance, a basic prohibition of vote hinders the individual in his freedom to participate in the electoral apparatus. When Andrew and Ben want to vote, the power of the state inhibits them.

Concerning the case of a privilege, the restriction is less than self-explanatory. Still, an example is how the right to vote for any given person eliminates the right for any other given person to vote for the first. When Andrew wants to vote for both himself and for Ben, the state ensures Ben his own vote, and thereby bereaves Andrew of it.

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\(^{31}\) KU 1973:26, p. 16  
\(^{32}\) ibid., p. 17  
\(^{33}\) KU 1974:8, p. 5  
\(^{34}\) KU 1973:26, p. 40  
\(^{35}\) Petersson, Sweden’s Constitutional Documents, p.380  
\(^{36}\) Hallberg, Eleven Texts in Political Theory, p. 69
This is to say, whereas the common will is equality, the individual may not always be satisfied thereby. As the individual will strives for benefits, it will do so even from an equal outset. Even with given, extensive benefits, the individual will want more.

As has been exemplified, there is indeed a necessity for a state insofar as maintaining the equality between individuals, for instance between Andrew and Ben. But this necessity presupposes the premise that Andrew has a legitimate claim on influence on Ben and that Ben reciprocally has one on Andrew.

The core of this dilemma however, is that the Constitution explicitly names the individual and her rights to be the supreme purpose.\textsuperscript{37} Subsequently, any compromise of said individual is inherently illegitimate. This means, if any single individual does not acquiesce to the displacement of power as constituted by the state, there is an insoluble illegitimacy.
4 The Difficulty of Legitimacy in the Swedish Model

4.1 The Problem of Displacing Power from Individual to State

As has been shown, for eons on end, governmental power was absolute and the subjects were forced to oblige or suffer the consequences. So why did this change?

Russian philosopher Fyodor Dostoevsky put it: “If there is no God, then I am God”. This however, does not entail any celestial properties in man, but rather that without God and His authority, man ascends to that vacant capacity and is rendered the highest of all values.

In a world where the significance of God, or any higher source of power, i.e. the dogmatic legitimacy, has diminished, a necessity for a replacement has become inevitable. The replacement is man herself. As John Stuart Mill put it: “Among the works of man which human life is rightly employed in perfecting and beautifying, the first in importance surely is man himself”.

Put simply, as the individual replaced or at least rivaled God as the highest value in the world, the notion of absolute power became obsolete. Instead, power became based upon the will of the people and legitimacy became utterly dependent on that will. Avishai Margalit labels it: “only the individual is worthy of being the possessor of sovereignty”.

This homocentric foundation constitutes for one of the extremes in the contradiction of legitimacy in the Swedish Constitution. The other, is the state; the popular representation which effectively carries the power, which allegedly stems from the people. Now, that the state is a necessity for human correlation is given, even explicitly so in the Constitution; Erik Holmberg puts it “the Constitution renounces in chapter one, article one, direct democracy. Any form but the indirect, i.e. the representative is hardly considered plausible”. Therefore, the popular representation is virtually unavoidable. This too, is explicitly legislated: “The Riksdag [the parliament] is the foremost representative of the people”. This goes to say that exertion of power will be bereft from the individual, where needed.

This however, will subsequently always entail displacement of power and thus a measure of illegitimacy, through the homocentric perspective. This illegitimacy is inevitable as long as one individual gets to decide over another and thereby compromise her freedom or free will, which the popular representation constitutes. Thus, the search for legitimacy is perhaps rather a quest to minimize illegitimacy.

4.2 The Swedish Solution to the Lack of Legitimacy

4.2.1 Subsidiarity

In minimizing displacement, and thereby illegitimacy, Sweden utilizes an institution which dates back to the Middle Ages; a strong regional autonomy. Alongside a pungent central power, the separate Swedish municipalities maintained relative independence and have been able to wield power of their own. Tommy Möller asserts: “This autonomy … is still a distinctive trait of the Swedish form of government”. This autonomy is also affirmed in the gateway article of the Constitution, which cements its importance.

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38 Dostoevsky, The Demons, p. 614
39 Mill, On Liberty, p. 123
40 Margalit, The Decent Society, p. 27
41 Holmberg, Our Constitution, p. 44
42 IG 1.4
43 Möller, Swedish Political History, p. 18
Through this institution, decisions, i.e. exertions of power, have been kept at a relatively close proximity to the individual. This too is noted in the research for the Constitution:

In the proposition there is a reminder of the strong tradition of popular autonomy in our country. The regional autonomy has continuously increased in importance and in extent. Today, the regions per se provide an array of significant social functions and therefore contribute decisively to society.\(^{44}\)

Again, in a system which claims its legitimacy on the input of the people, retaining the application of power as close as possible to the individual concedes to a somewhat placatory minimization of the illegitimacy, by virtue of a diminished displacement. However, the displacement is never completely extinguished.

As was previously argued, given the supreme purpose of the individual, illegitimacy is never entirely eradicated so long as there is interference into the sphere of the individual. The delegation of power, from state to regional, only functions to lessen the displacement somewhat. To exemplify this further, the law of municipalities explicitly decrees the same principle of equality that the state does: “Members of a municipality must be treated equally, unless there are objective reasons decreeing otherwise”.\(^{45}\) Reminiscing temporarily the quote from Rousseau (in chapter 3.1.3), on the contradiction between the common and individual will, the scenario is much the same, only closer to the individual.

\subsection*{4.2.2 Elasticity}

An additional aspect of solution is potentially the elasticity of the Constitution. This means that the written Constitution does not always have to correspond with actuality. It should absolutely be noted that the Constitution is not at all an insipid edict, but rather that its inadequacies are ignorable, to some extent.

The given example is that “for fifty years democracy and parliamentarism was exerted under a Constitution claiming ’the King alone shall rule the nation’”.\(^{46}\) For an extended period of time, the Constitution of 1809 was obsolete, but in actuality it was little more than a quaint artifact of time past.

However, the inferiority of the Constitution of 1809 in comparison with that of 1974, debilitates the contiguity of the phenomenon, which very much incapacitates the institution of elasticity. Still, as has been repeated, if the increase or decrease of power of one actor is dependent on another’s then certainly an elasticity of the Constitution provides for all the more potency in the power of the people; in the power of the individual. Therefore, this institution should not be dismissed entirely, but be kept as an alternative.

\(^{44}\) KU 1973:26, p. 20
\(^{45}\) Law of municipalities 2:2
\(^{46}\) Bäck, \textit{Swedish Politics} p. 373
5  An Evaluation of the Swedish Model of Legitimacy

After the conveyance and explanation of the Swedish model, an evaluation is prompted. For this particular passage, two conventional models for charting and defining legitimacy will be employed. One is the century-old, although still exuberantly influential theory of *legitimate domination* as conceived by Maximilian Weber, the other is the more contemporary and equally prominent theory of Heinelt and Haus.

5.1  Legitimacy According to Heinelt and Haus

Disregarding for a moment, the institutions for maximizing legitimacy, or perhaps minimizing illegitimacy, within the Swedish system, an assessment will be made according to the theories of Heinelt and Haus. The reader will recall their theory as the basis for the explication of the notion of legitimacy, in chapter 1.3. A simplified model of their theory looks as follows:

<table>
<thead>
<tr>
<th></th>
<th>Principle</th>
<th>Criteria</th>
<th>Crises [illegitimacy]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legitimacy of Input</td>
<td>Participation</td>
<td>Acquiescence</td>
<td>Reduced citizen involvement etc.</td>
</tr>
<tr>
<td>Legitimacy of Output</td>
<td>Efficiency</td>
<td>Troubleshooting</td>
<td>Policy failure</td>
</tr>
<tr>
<td>Legitimacy of Throughput</td>
<td>Transparency</td>
<td>Liability</td>
<td>Secrecy, ambiguity</td>
</tr>
</tbody>
</table>

(Haus & Heinelt 2005)

5.1.1  Legitimacy of Input

The *legitimacy through input*, that is to say through the participation of the individual in the popular representation, is the superlative source of justification in the Swedish system. This is asserted in the very first sentence of the Swedish Constitution: “all public power in Sweden proceeds from the people”.

According to Heinelt and Haus, such an adage is very placatory for achieving legitimacy of input, they claim: “The mechanism that creates legitimacy is participation. The citizens consider the system legitimate because they contributed or had the chance to contribute”.

As was established recently, the major flaw is that unless all individuals acquiesce to this system, a degree of illegitimacy is inevitable. To repeat an already nearly exhausted expression, so long as one single individual’s sphere of autonomy is inhibited by another’s, and this first individual does not accede to this, there can not be total legitimacy.

As such, this stance towards legitimacy, which is the dominant one in Swedish law, is less than immaculate. This means that the Swedish model can not be used to achieve utter legitimacy. However, along with minimization of displacement of power, as illustrated in 4.2.1, illegitimacy is reducible to acceptable levels.

5.1.2  Legitimacy of Output

Although conceivably secondary, there is de facto an agenda within the Constitution; an agenda that has already been explained; the well-being of the individual, the fulfillment of democratic values and the individual’s freedom and rights.

Such an agenda, and the implementation of it is the foundation for what Heinelt and Haus label *legitimacy of output*: “the ability to solve problems and to deliver, is the mechanism
which creates legitimacy. The citizens consider the system legitimate due to its aptitude to solve problems”.

As such, legitimacy could indeed be claimed through the output of the Swedish state. Still, the same problem persists, since the right of one individual is the inhibition of another. Subsequently, the difficulty with this system is: if the legitimacy of a system is based on a given agenda, who gets to set it? This question of who participates, appears fundamentally dependent on input as well.

### 5.1.3 Legitimacy of Throughput

This aspect too, which is based on the liability of the state before its citizens, is to be found in the Swedish system. In fact, in a parliament motion (1973:1843), it was suggested that this adage be extended to envelop “and is controlled by the people”. However, this was considered redundant, since the foundation of the popular opinion was considered to render the second claim inherently true, and obviously so.

Furthermore, the entire 12th chapter of the Constitution is devoted to the warranty for control of the state and the *Freedom of the Press Act* guarantees an extensive transparency of public documents.

Heinelt and Haus emphasize: “Liability is the mechanism of legitimacy. The citizens consider the system legitimate since they have instruments of liability at their disposal and the information necessary to decide who and if someone is accountable”.

The major flaw is that a legitimacy of throughput alone lacks the support of input or the efficiency of output. It functions very well as a compliment to either one, but not on its own. Whereas the institution of *legitimacy of throughput* is near ubiquitous within the Swedish system, it is not more than an increment of legitimacy.

### 5.1.4 Conclusion

The conclusion deducible is not easily decipherable. Since the evasion of illegitimacy through legitimacy of input seems intangible, a legitimacy of output gives the impression of higher efficiency. Still, as has been hinted at, output is not entirely unproblematic. This is since even though the agenda of a given order may be implemented flawlessly, the question of who sets the agenda lingers. The existence of an agenda presupposes the creation of it by someone, which equates that there is an issue of legitimacy of input at the bottom of the legitimacy of output. Simplified, output is essentially based on input as someone has to decide (input) what results are desirable (output).

This would indicate that if there is to be any justification, legitimacy of input is, not only preferable, but inescapable.

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48 ibid., p.23
49 KU 1973:26, 58
50 Bäck, *Swedish Politics*, p. 23
5.2 Legitimacy According to Max Weber

Another theory on legitimacy is that of German jurisprudential professor and sociologist Maximilian Weber. Weber claimed three types of authority to be the root of all legitimacy or illegitimacy and that his theory was applicable to every civilization and society that ever existed. This so called “legitimate domination”\(^{51}\) and the “inner justifications”\(^{52}\) validating it, is divided as follows (based loosely on Raymond Wacks schemata):

<table>
<thead>
<tr>
<th>Domination</th>
<th>Legitimacy of system</th>
<th>Legitimacy of people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charismatic</td>
<td>Charisma of leader</td>
<td>The people accept the law due to leader’s qualities.</td>
</tr>
<tr>
<td>Traditional</td>
<td>Tradition, habit</td>
<td>The people accept the law since it was ‘always’ so.</td>
</tr>
<tr>
<td>Legal-rational</td>
<td>Rationality</td>
<td>The people accept the law due to logic or rationality.</td>
</tr>
</tbody>
</table>

(Wacks 2005)

5.2.1 Charismatic Authority

The legitimacy derived from charisma has as its archetype a chieftain or a tribal leader as a ruler. This ruler is associated with quasi superhuman qualities wherefore the people accept his authority and thereby legitimacy is established. Weber explains that the ruler: “lives for his cause (Sache), ‘aspires after his work’, whereas the devotion of his adherents, be they disciples or liegemen (Gefolgschaft) or his personal, partisan supporters, is focused on his person and his qualities”\(^{53}\).

This system was perhaps only plausible to Sweden during the Viking era, when personal cults were last an occurrence on a state level. However, Weber warned of for the return of this phenomenon which was validated through the ephemeral resurgence vis-à-vis Nazism and fascism during the first half of the 20th century.

5.2.2 Traditional Authority

Regarding the legitimacy of tradition, the commonly used example is the monarchy where the king, through inheritance of his title and the mandate of God is accepted by the people merely since it has always been so.

Weber spoke of: “the authority of ‘the eternal past’, of custom, hallowed by the fact that it has held sway from time immemorial and by habitual predisposition to preserve it”.\(^{54}\) In Sweden this model is equally outdated; in spite of the monarchical form of government, the monarch wields but symbolic power.

5.2.3 Rational or Legal Authority

The legal-rational authority is the system employed in modern, representative democracies and it is essentially the rule of law. The people accept rules because of procedures, principles and laws that emanate from the popular opinion.

This third and final system is naturally the one of most importance, to Weber, and to the Swedish system. Concerning its justification, Wacks elaborates:

51 Wacks, *Understanding Jurisprudence*, p. 211
52 Weber, *Political Writings*, p. 311
53 ibid., p. 312
54 ibid., p. 311
In Weber’s view, in order to understand political legitimacy under conditions of legal domination it is not necessary to evaluate the content of the law. The existence of law – in particular conditions and in a particular form – provides its own ideological basis whatever its substantive content. And the action of the state, in accordance with law, derives its legitimacy from law.\textsuperscript{55}

As such, this system derives its legitimacy from a given set of rules, which begs the question of what validates the rules themselves?

It seems more than fair to assume that these legitimate rules did not formulate themselves, nor that they are correct a priori, but rather that they at some point reflected the opinion of someone, which would then justify them.

Even Weber seems to admit this flaw, if vaguely. As Weber claims “legal domination is not dependent on the extent to which the law reflects the values to which the people who accept its legitimacy subscribe”,\textsuperscript{56} he exposes the true root of legitimacy. For even if the people do not have to subscribe to the values of the law, they do have to subscribe to the law in order for it to be legitimate – they have to accept its legitimacy. As such the notion of \textit{legitimacy of input} from chapter 4.3.1 becomes quintessential, even to this model, claiming to be autonomous from it.

\subsection*{5.2.4 Common Denominator}

In contrasting the three subdivisions a shared trait is revealed. All explanations of authority, whether it is charismatic, traditional or legal, contain the phrase \textit{people accept}. This suggests that ultimately, no order is legitimate without the acceptance of the people of said order.

In connection with Heinelt’s and Haus’ schemata, this indicates that the legitimacy of input is the basis of Weber’s entire theory. Correspondingly, it is also the legitimacy of input which is the elemental portion of the Swedish model.

\subsection*{5.3 \textbf{Deductions from Heinelt, Haus and Weber}}

The conclusions arrived at from the theoretical approaches of Heinelt, Haus and Weber point to a common necessity to rely on the popular support. Whereas Heinelt and Haus offer output and throughput as alternatives to a legitimacy of input, the fact remains that there has to be a body of people to decide what results are desirable or what kind of transparency should exist. Likewise, Weber can not escape his reliance on the notion of popular acceptance in his legitimate domination. As human beings are of utmost importance, their role can not be bypassed.

The simplified conclusion is thus that justification vis-à-vis input is the only alternative for any society which holds the people or the individuals as the core value and that wishes for there to be any legitimacy at all.

\begin{itemize}
\item \textsuperscript{55} Wacks, \textit{Understanding Jurisprudence}, p. 212
\item \textsuperscript{56} ibid., p. 212
\end{itemize}
6 Two Extremes – Legitimacy of Nozick and of Rawls

Throughout this entire thesis, the contradiction of the individual and the common has been pivotal. To further elaborate on the notion of legitimacy, two notorious propagators of either side will be presented. One the one hand, the extremely libertarian Robert Nozick, whose assertion of the absolute value of the individual’s right to her own person causes a rejection of any but a minimal state, and on the other John Rawls, whose social contractarianism stands, at least seemingly, diametrically opposed.

Thereafter, the two radical stances will be contrasted with the Swedish model, so as to illustrate how it paradoxically carries traits from both.

6.1 Robert Nozick’s Minarchism

Again, Robert Nozick puts the emphasis on the individual freedom or liberty, and opposes the equality prompted by the state, claiming it to be totally divergent. Wacks explains Nozick’s reasoning from *Anarchy, State, and Utopia*: “The state, in Nozick’s view, is ‘intrinsically immoral’; therefore … he proposes a ‘minimal state’ whose functions are limited to the ‘night-watchman’ protection against force, theft, and fraud, the enforcement of contracts, and a few other essentials”.

As such, the legitimacy of Nozick is derived by the individual will, in its uninhibited state. “Nozick’s fundamental value is constituted by the ideal of individual autonomy. For Nozick, respect for the individual’s autonomy is respect for the free will of the individual. Free will endows legitimacy, restriction endows illegitimacy”. By this standard, the ambition for equality that the state represents is not only a nuisance, but inexcusable.

As has been asserted in this paper, power is a limited resource; one actor’s gain is another’s loss. And this theory is definitely consolidated by Nozick whose primary disagreement with the common will, or equality, is a resentment regarding the notion of inhibiting the freedom of one individual for the gain of another.

Instead, Nozick suggests that interaction should, to as great an extent as possible, be founded on the reciprocal agreement of individuals. Thus, he formulated the ‘entitlement theory’:

1. A person who acquires a holding in accordance with the principle of justice [legitimacy] is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.

This theory, in all its simplicity, illustrates the foundation of legitimacy as imagined by Nozick; individual mandate as immaculate as possible. This minarchism, is necessary in order to safeguard the individual, who is the source of all legitimacy.

Accordingly, what Nozick is arguing is a legitimacy of input, so fundamental, that it nearly renders the popular representation redundant. In his vision of utopia, Nozick envisions:

57 Wacks, *Understanding Jurisprudence*, p. 254
58 Carbin, *Texts in Contemporary Political Theory*, p. 62
59 Nozick, *Anarchy, State, and Utopia*, p. 151
The minimal state treats us as inviolable individuals, who are not to be exploited by others in as means or tools or instruments or resources. It treats us as human beings with separate rights, and the dignity that that provides. It treats us with respect, by respecting our rights and allowing us, separately or with whom we decide, to choose our lives and realize our purposes and our self-conception, to the extent possible, supported by voluntary cooperation with other human beings, with the same value. How dare any state or group of individuals do more? Or less?  

6.2 John Rawls’ Contractarianism

Rawls’ theory of a distributive justice, where the immensity of the state’s function is pivotal, may appear the very counterpart of Nozick’s theory. However, they both stem from the same basic value. Rawls, who was in fact the mentor of Nozick at one time, was equally as dedicated to the defense of the individual. The difference is that Rawls recognized, or at least admitted to a higher degree, the inequality into which men are born, where talent and qualities are distributed by the arbitrariness of coincidence. As such, the gains of the position into which you are born, is innately illegitimate and it is the state’s responsibility to correct this illegitimacy. Rawls’ principle of justice looks like this:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the scheme of liberties for all; and

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society.  

Thereby, what creates legitimacy within an order or society is the implementation of the aforementioned principles. Paraphrased, the implementation of the given agenda is the foundation of legitimacy. To use the model of Heintelt and Haus, it is de facto a legitimacy of output; of results. Still, this equality as a result is fundamentally reliant on the value of the individual which would render it nothing more than an output built on input.

Whereas Nozick claims that the individual’s worth is so great that it can never be violated, Rawls claims that the individual’s worth is so great that in order to assure a minimal standard for all individuals, the individual can in fact be compromised. Accordingly, his golden rule is:

All social values – freedom and opportunity, income and wealth, and the social foundations of self-respect – is to be distributed equally unless an unequal distribution of any or all of these values benefits all. An injustice is consequently an inequality that is not to the benefit of everyone.  

Carbin, *Texts in Contemporary Political Theory*, p. 86
Rawls, *Justice as Fairness*, p. 42
Carbin, *Texts in Contemporary Political Theory*, p. 93
6.3 Nozick, Rawls and the Swedish Model

From the two, inconceivably coalescent perspectives recently discoursed, several traits are in fact applicable to the Swedish model. For instance, Nozick as well as Rawls, recognize the immense and unparalleled value of the individual, much as the individual is the explicit purpose for matters of state, according to Swedish Constitution.63

The differentiating factor is the view of the state; for Nozick it is a probable hindrance, for Rawls it is a necessity for the aforementioned purpose. In Swedish legislation, the role of the state is indeed considered a necessity for society. On the other hand, it is equally as important to remember that the state is considered to be no more than an instrument of the people, and must never be allowed to be more than that or to ever alienate itself from that particular purpose.

This difference also elicits the respective bases of legitimacy. Whereas Nozick argues for an individual autonomy so extensive that it is automatically legitimate, Rawls sees legitimacy only within a society where the rights of the individual are implemented strictly, vis-à-vis the state. However, despite the critique Nozick directs towards the state he still recognizes its importance in some aspects, wherefore he asserts the need for a minimal state rather than for no state at all. In Swedish legitimacy, the role of the state is extensive, but comprises only the function of popular representation; a striking compromise of Nozick and Rawls.

The legitimacy of Nozick and of Rawls is one of input and output respectively. Similarly, the Constitution stipulates that power stems from the people, which indicates input, and an agenda as the purpose of said power, which would indicate output. Still, the fundamental feature is the agreement of the people. For both Nozick and Rawls, and for Swedish law, the basic and unprecedented value is the will and rights of the individual, which is fundamentally a legitimacy of input. However, as has been equally specified, along with legitimacy of input, a measure of illegitimacy is inevitable and any given society can but attempt to reduce it.

63 IG 1:2
7 The Swedish Model Revised – European Supremacy over the Swedish Constitution

Thus far, a few conclusions have crystallized; given the original source of legitimacy to be the individual and her will and freedom, and the necessity for a state to inhibit one individual in order to assure another, a measure of illegitimacy is inevitable.

Furthermore, the homocentric view of society, to which Sweden definitely subscribes, hinders any but legitimacy of input. This is since the will of the people or of the individuals collectively, is the basis of all power and of all value, and even if you choose to justify the exertion of power by a legitimacy of output or throughput, the perspective results or liabilities are fundamentally decided by people; by individuals. As such, the inescapability of illegitimacy is consolidated further.

As has been illuminated, the Swedish solution to this question is a reduction of the illegitimacy, by means of minimizing the displacement of power; instead of exertion of power occurring solely on a governmental basis, the various municipalities of Sweden are granted an extensive autonomy, effectively enabling a much greater proximity between those wielding power and those obliged to obey.

However, by ascension into European Union, the Swedish solution is thwarted heavily as the displacement of power is thus engorged.

7.1 The Swedish Constitution and the European Treatise

The relevant legislation is also to be found within the Instrument of Government of the Constitution\(^\text{64}\), wherein an extensive part of the normative privileges is transferred to the European level. In his commentary on the Constitution, Holmberg explains:

> The parliament added to the new rule (§ 1 of 10:5) the condition that the European Community has ‘a protection of freedoms and rights corresponding to that of this Constitution and in the European convention in regard to the protection of the human rights and the fundamental freedoms’ … Aside from this, the new Constitutional rule contains nothing concerning restrictions on the capacity which can be allocated to the European Community. Thus, the crucial factor is primarily what is implied in existent treatises and legal acts that Sweden subjected itself to upon ascension – l’acquis communautaire, or, as it is referred to in the transitional rules of the change of 10:5 of the Constitution, ‘the rules of the Communities, at the time of ascension’.\(^\text{65}\)

Within the European Union, this sovereignty of European law over national law is called the principle of *superiority of Community law*. This effectively claims that should European and national law conflict, the national law must change, in accordance with the European decree.

Now, in comprising a population vastly exceeding the Swedish, and given the sovereignty of the European treatise over even the Swedish Constitution, the membership within the European Union connotes a further dislodgment of power, further away from the individual. An enlightening, if overly simplified, example is this: if the individual has to suffer an inhibition in her absolute freedom due to the will of nine million other Swedes, that inhibition is increased exponentially as that same individual is now coerced to comply with the will of

\(^{64}\) IG 10:5

\(^{65}\) Holmberg, *Our Constitution*, p. 179
some 500 million Europeans. Similarly, if the average citizen in Stockholm experienced an illegitimacy in having to share the say over her own person with a given individual from Gothenburg, how much more illegitimate is not the necessity to share it with someone from Budapest, La Valetta or Dublin.

Some argue, that this displacement is, by virtue of the immensity of the European Union, so exaggerated that any attempt to legitimize its power by the will of the people, that is to say on an input basis, is now an emaciated, unfruitful method. Bäck argues that “the membership of the European Union would entail a significant part of legislation to take place in European council, as opposed to earlier, in the parliament”.66

Sociologist Karl-Göran Algotsson would have it that Sweden has de facto, regressed to the era of separation of powers, which stands in dire opposition with the thought of a legitimacy of input. He claims that “on the one hand, we have a Constitution that is highly influenced by the notion of the democratic majority rule. On the other hand, the EU-membership constitutes a veritable separation of power, to a great extent”.67

As such, presupposing the reinstating of such a form of government, the additional displacement of power equates an immense reduction in legitimacy founded on the will of the individual. Not only is the power spread much more thin over the enlarged group of individuals, worse yet is the fact that with separation of powers, the power is not exclusive to the popular representation; the parliament. This means that a measure of the power becomes totally separate from the people, or from the individual.

In fact, it may be maintained that this change has prompted the renunciation of a legitimacy based on input. Since, the European Union does not have a people with any sort of homogeneity, but rather a heterogeneous collection of peoples who identify with their respective countries rather than with the Union, there is no concise source of legitimacy in the people. Instead, European institutions have been reduced to justification through the benefits of cooperation; of the output.

This evident dislodgment of power and its subsequent impact on legitimacy renders the Swedish solution somewhat obsolete. Since the Swedish model is now inferior to the European, some form of European solution must remedy this problem.

### 7.2 The European Remedy

#### 7.2.1 Principle of Subsidiarity

Much like the Swedish model and its autonomy of municipalities, there is a pivotal notion within the European Union called the principle of subsidiarity, with a corresponding function of reducing displacement of power. It essentially means that any decision, or exertion of power, should be made at the appropriate level. This is to say, that if it is the most effective to make a given decision in the Swedish parliament, then the European echelon should not interfere. As a matter of fact, the very first article of the treaty on the European Union asserts that decisions are to be taken “as closely as possible to the citizen”.68 In the treaty on the European Community, the principle is elucidated:

66 Bäck, *Swedish Politics*, p. 76
67 ibid., p. 77
68 Treaty on the European Union, article 1
In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives cannot be sufficiently achieved by the Member States.\textsuperscript{69}

However, since the key-word is ‘effective’, this subsidiarity does not necessarily entail the reduction of illegitimacy as its purpose, but rather the increase of efficiency, or output. Bäck elaborates:

The principle of subsidiarity … stipulates that matters should be handled at the political-administrative level, where the highest amount of efficiency is obtained. The principle of subsidiarity is no general decentralization-clause that causes matters to be decentralized as far down as possible. If the most efficient solution is to handle a matter on a level higher than the national, then the national is not to be involved.\textsuperscript{70}

Accordingly, this is more of a legitimacy of output than input, which means that the priority is efficiency, rather than popular representation, which is the explicit requirement in the Constitution. Still, this instrument is important in retracting power within Sweden.

Furthermore, under the parole of suggestions for a Constitutional treaty, the idea of the principle of subsidiarity being controlled by the respective national parliaments has been suggested,\textsuperscript{71} which will lessen the displacement of power somewhat. However, in actuality, it will remain at a considerable distance from the individual. As such, the same essential dilemma in the Swedish model persists in the European as well.

\subsection*{7.2.2 Principle of Proportionality}
An additional instrument is the principle of proportionality, which is an already existing principle in Swedish law and which dictates that “no greater power hall be exerted than is required for obtaining the goal of a specific measure, that is to say a balance between goals and means is desirable”.\textsuperscript{72}

The reassurance that the state, or in this case, the union will not go further than is required, is an insurance of a measure of the individual’s freedom. This reassurance and its subsequent warranty for individual freedom are explicitly asserted in the treaty: “Any action by the Community shall not go beyond what is necessary to achieve the objectives of this treaty”.\textsuperscript{73}

\subsection*{7.2.3 Institutional Equilibrium}
Another perspective on the legitimacy of the European Union is the reciprocity of its institutions constitutes a form of mutual inspection. Article seven states the existence of a European parliament, a Council, a Commission, a Court of Justice and a Court of Auditors with the collective instruction that “each institution shall act within the limits of the powers conferred upon it by the treaty”.\textsuperscript{74}

\begin{itemize}
\item \textsuperscript{69} Treaty on the European Community, article 5
\item \textsuperscript{70} Bäck, \textit{Swedish Politics}, p. 121
\item \textsuperscript{71} ibid., p. 153
\item \textsuperscript{72} ibid., p. 121
\item \textsuperscript{73} Treaty on the European Community, article 5
\item \textsuperscript{74} ibid., article 7
\end{itemize}
This *institutional equilibrium* entails a legitimacy of throughput, as Heinelt and Haus would have it, where the liability of each institution is tangible. Along with this instrument, there is a principle of transparency,75 in the treaty on the European Community, which would serve the same purpose of popular insight into the matters tended to.

7.2.4 The Voluntary Membership

The possibility of withdrawal is crucial in the search for legitimacy. Had the same possibility been available to the individual, illegitimacy would potentially have been eradicated, since any individual disinclined to participation within the Swedish model, would have been able to escape the interference of others on her own person.

Within the European Union, the fact that any given state has chosen and perpetually continues to choose to be part of the union and thereby subjects itself to the regulations is a legitimacy of input unprecedented in Sweden, and potentially in any state.

7.3 European Conclusion

Evidently, the further displacement of power and consequent further illegitimate order of the European Union can be combated, at least somewhat efficiently. However the same, problematic essence remains.

In regard to the principle of subsidiarity, the fact is that it constitutes no more than the eventuality of reinstating power to the national popular representation. This effectively means that in a best case-scenario regarding subsidiarity, the European Union will yield for the benefit of the Swedish parliament and thus reinstating the status quo of pre-EU.

Similarly, the principles of proportionality and institutional equilibrium are institutions already existent in Swedish law, and that law ultimately contains a measure of illegitimacy. This means that the dilemma of inherent illegitimacy is not remedied by the ascension into the European Union, but rather worsened only to remain unaltered at best.

Concerning the voluntary membership, an instrument of legitimacy unparalleled in Swedish law, the problem again is the level of the remedy. Had it been on individual level, it might well have been the ultimate solution to the problem of displacement of power, since that would offer the reluctant individual an opportunity to escape state influence. Still, on a state level, a withdrawal from the Union only reinstates and reasserts the former displacement between individual and state.

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75 ibid., article 255
8 How come the Swedish Model Works?

So far, the issue of illegitimacy has been proven to be palpable in the European Union, as well as in Sweden, if possibly to a lesser degree. The inevitability of some measure of illegitimacy persists and begs the question of why the people accept it.

While the representative democracy, with equality as a cornerstone, has been described as quite the menace to the individual, in actuality the Swedish populace display a near unparalleled affection towards this system. David Karlsson claims the contentment in Sweden with this electoral democracy to be the highest in all of Europe, as is shown below:

![Graph showing support for representative democracy in Sweden, Spain, EU, Ireland, and Hungary](image)

(Karlsson 2006)

This stipulates that the Swedish population is not very concerned with the illegitimacy that this paper has concluded to be inevitable within the Swedish model. The reasons for this may be innumerable, however, a few will be stated.

Initially, as the graph shows, an unparalleled majority in Sweden support this model of society as the best, plausible solution. And although this model will inhibit the freedom of those individuals predisposed towards it, and will thus create a measure of illegitimacy, a relatively greater legitimacy can be derived from the fact that a substantially larger number voluntarily participate in it. Tracing the thought of Hobbes or Rousseau will indicate that the motive is a preference of safety instead of freedom. As Rousseau’s earlier quote illuminates: “it is only to avoid falling victim to an assassin that the individual acquiesces to death, should she herself become one”.\(^{76}\) only for fear of death does the individual agree to the institution of capital punishment; only to impose her will upon society, does she allow society to limit her own. Most people, and decidedly most Swedish people, are adamant in this preference, which seems the foundation of the modern society.

Secondly, in a brief reconnection with Möller’s identification of the Swedish populace as historically apolitical where the people were stigmatized by an incessant citizenry passivity, he concludes that it is the definitive result of a strong Lutheran tradition of allegiance to your superiors: “one was supposed to be content with one’s condition and was to show respect and obedience towards the corporal as well as the spiritual authority”.\(^{77}\) Accordingly, even in spite of “a blossoming liberal social order, inspired by the ideals of the French revolution … parallel to this tradition of equality is another hallmark, permanent trait in Swedish political culture: faith in authority”.\(^{78}\)

\(^{76}\) Rousseau, *On the Social Contract*, p. 49  
\(^{77}\) Möller, *Swedish Political History*, p. 35  
\(^{78}\) ibid., p. 42
This would explain how the Swedish, although shifting from an egalitarian to an individual outlook, remained placated under the authority, and why there was never a revolution or civil war in Sweden.

Thirdly, as was touched upon as early as the chronology of legitimacy, a pivotal notion within Swedish society has been agreement. Möller speaks of two categories of agreement: \textit{compromise} and \textit{hegemony}. Concerning the first, Möller claims: “De facto, opposition exists therefore regulations and routines should be developed so as to facilitate the management of them. The underlying premise is consequently that conflicts are adverse and should be avoided”.

Regarding the latter, it asserts that: “the political culture is impregnated with values primarily propagated by social democracy”. This would imply that the leftist, social democratic view on the individual freedom and rights, perhaps best likened to that of Rawls’, is the hegemonic paradigm to which oppositional, rightist views à-la-Nozick have had to acclimatize. Subsequently, there is a clear stance on the relationship of state and individual wherein the Swedish populace has reached an acknowledgement of the importance of a state.

The common denominator is a common interest in saturating as many and as wide-spanning needs as possible. Now, whereas this placation of the majority will inhibit any reluctant minority or even individual, this inclination for acceptance seems the key to the success of Sweden.

This acceptance is deeply embedded in the Swedish populace, and whether by a genuine support, a passive acceptance, or by the genuine will to get along, the fact that people accept the illegitimacy is perhaps the greatest source of legitimacy available.

\footnotesize{79 ibid., p. 301
80 ibid., p. 301}
9 Contrasting Views

Following the predicaments and remedies of the Swedish model, before and after its ascension into the European Union, a brief comparison will facilitate some perspective on legitimacy in Sweden. For this comparison, two intriguing countries will function as contrasts to Sweden; on the one hand, the Russian Federation, whose history is so intricately interwoven with Sweden’s and yet its current conditions and system differ immensely from Sweden’s. On the other is the People’s Republic of China, to whom Sweden is growing evermore dependent and whose stance towards legitimacy and popular input is perhaps the opposite of the Swedish.

9.1 People’s Republic of China

The example of the People’s Republic of China offers an intriguing manifestation of the contradiction between individual and common insofar as even in the name of the state itself, the people are not omitted to be mentioned. However, there is a great difference between the claimed and the actual importance of this people. In actuality, China is ruled by an elite, which is far from an even representation of the people. Colin Mackerras asserts:

> Although there are eight ‘democratic parties’ (minzhu dangpai) still in existence in China in addition to the Chinese Communist Party (CCP), only the CCP holds any real power… In theory, the CCP still promises to consult with the ‘democratic parties’ and accept political supervision from them; however, they really have no choice but to accept the CCP’s leadership. The reality is that they survive on sufferance from the CCP and could be immediately crushed if they refused to do the CCP’s bidding.\(^{81}\)

This exclusivity of power comprises an immense displacement of power and consequently an illegitimacy through the perspective of legitimacy founded on the people. For even if the CCP considers itself the “vanguard of the proletariat”,\(^{82}\) its some 48 million members do not even constitute five per cent of the total population. Still, the vastness of the National People’s Congress (NPC) is nearly without boundaries:

> The NPC has the power to elect the chairman of the Central Military Commission, the president of the Supreme Court and the procurator-general of the Supreme People’s Procuratorate. It decides on the choice of the premier … It also decides on the choice of vice-premiers, state councilors and ministers of the government.\(^{83}\)

Thus far, the role of the state is unchallenged, and by the reasoning of this paper, this would imply an inhibition of individual power. An illuminating example is the legal and subsequent penal system of China, wherein the individual’s freedom is restricted so heavily as to include the regular violation of fundamental human rights. This includes significant abuse of state

\(^{81}\) Mackerras, *The Cambridge Handbook of Contemporary China*, p. 59

\(^{82}\) ibid., p. 59

\(^{83}\) ibid., p. 65
power such as extracting confessions by torture, frame-ups, and unlawful detention\textsuperscript{84} and an astonishingly low rate of acquittal of only 0.7 per cent in criminal cases which entails, with all probability, \textit{a priori} trials, where the suspects are convicted beforehand.\textsuperscript{85}

Subsequently, the Chinese system represents a distorted take on the notion of popular representation, where a specific group of people have taken it on themselves to assess what it is that the people want, notwithstanding the individual input. It seems in China, the most catastrophic event through the perspective of state interference into the individual sphere has already materialized; the separation of people and state and the subsequent notion of the state as something more than the collective will of the individuals. In contrast with the Swedish model, this displacement is perhaps the epitome of illegitimacy.

\textbf{9.2 The Russian Federation}

The Russian model offers contrast to the Swedish insofar as the Russians, with several conditions similar to the Swedish, have created a model far different from the Swedish.

Following the chaotic conditions of the collapse of Soviet Russia, the rule of Moscow was challenged with further deterioration, as its immense number of nations struggled for further autonomy. Jeffrey Kopstein explains: “Russia’s 89 regions and ethnic republics began to push for even greater autonomy, withholding taxes and resources and often insisting on the primacy of regional laws over central laws”.\textsuperscript{86} When order was restored, the Kremlin felt a need to centralize and consolidate its own power, in order to be able to quench any insurgencies. This is reflected in the Russian constitution:

\begin{quote}
The 1993 Constitution gives by far the greatest share of political power to the president. The Russian president is the commander in chief of the armed forces, appoints the prime minister, and even has the right to issue presidential decrees with the force of law.\textsuperscript{87}
\end{quote}

This centering of the power around one specific person constitutes a displacement of power very much comparable to the Chinese. Despite the fact that the Russian state power is not as extensive as the Chinese, the fact that it is centered around one given individual facilitates an almost equal displacement and consequent illegitimacy.

However, there is an additional force to be reckoned with on the Russian stage; the Oligarchs. They comprise a collection of individual’s who are not necessarily connected with the government, but who, through gargantuan holdings in the infrastructure and media, possess considerable power.

Stefan Hedlund, professor of Eastern European studies, envisions the future of Russian society to be one of a merger between the Kremlin and the oligarchs, where the oligarchs support for the presidential power will equate an implied permission for their financial extortion.\textsuperscript{88} This will consequently only lead to the further oppression of the people, as the joint ventures of the Kremlin and the oligarchs will harness an immense power, which will bereave the average citizen of at least some individual power.

Consequently, much like in the Chinese system, there is a very palpable displacement of power. And if there is one thing this paper insists upon it is that displacement of power equals an infringement on legitimacy.

\textsuperscript{84} ibid., p. 72
\textsuperscript{85} ibid., p. 70
\textsuperscript{86} Kopstein, \textit{Comparative Politics}, p. 232
\textsuperscript{87} ibid., p. 233
\textsuperscript{88} Hedlund, \textit{Two Years with Putin}, p. 24
10 Conclusion
Finally, a conclusion will be made. It aims not only to summarize this essay, but also to manifest the deductions arrived at throughout it. It will cover the respective parts of the Swedish model and its evaluation, the European model, the success of the Swedish model and lastly it will aspire to answer the questions raised in the abstract.

10.1 The Swedish Model
The common denominator of nearly every single thinker in this essay is an outset from a homocentric stance on the world. This entails that the human being; the individual, is the basic value and the basic purpose of every order and of every action. Thus the inevitability of legitimacy of input materializes. This is since all activity stems from human will; from the people and one would be hard-pressed to find another source of legitimacy.

Reconnecting again with the initial chronology, this rivaling legitimacy disappeared along with the era of dogma. So long as there was a God to utilize as a foundation for a given mandate or action, the legitimacy was not dependent on popular input. However, as the individual became the paramount value of society, popular input became inescapable. And even as Heinelt and Haus try to formulate other justifications, such as output or throughput, at the base there is always an input necessary to discern the adequate efficiency of output or the satisfactory transparency of throughput. As such, legitimacy of output or throughput must consequently be built on a foundation of input.

Similarly, Weber’s theory on legitimate domination offers three seemingly disparate notions on justification. Still, all of them presuppose an acceptance from the people, which is fundamentally a legitimacy of input. Even the two extremists of legitimacy; Nozick and Rawls, propagate the individual as the essential value for legitimacy. And in spite of their irreconcilable deductions on the importance of state power, they arrive at them with the same care for the individual and for her rights.

Thus far, with the inevitability of legitimacy of input, comes yet another inevitability: that of a measure of illegitimacy. As was mentioned earlier, the possibility of a direct democracy was dismissed in the research for the Swedish Constitution, and understandably so. For reasons of functionality, a popular representation is unavoidable in any operational, democratic society. This however, intrinsically induces a displacement of power, away from the individual towards the state. And since the displacement is thus unavoidable, so is the illegitimacy.

This illegitimacy, constituted by a displacement of power, is comprised mainly by the notion of the individual as the pinnacle of all values, and any inhibition of her, without her explicit acquiescence is therefore quintessentially illegitimate.

Therefore, with an obligatory measure of illegitimacy, the pursuit of legitimacy becomes more of a mission to reduce illegitimacy. In Sweden, this reduction is considered attainable mainly through the reduction of the displacement of power. This is achieved vis-à-vis a regionalizing of power. All of Sweden’s respective municipalities carry a legislated, extensive autonomy. As such, many decisions, i.e. exertions of power, are confined to a closer vicinity to the individual, and several restrictions on the individual sphere are lessened in comparison with how they would be on a state level.
With regard to the additional instrument; the elasticity of the Constitution, it has been concluded that whereas it functioned well together with the apparently inadequate Constitution of 1809, it was rendered more or less obsolete by the current Constitution, due to its correspondence with popular opinion.

As such what remains is primarily the notion of regionalizing power. This regionalizing as the solution invokes the imminent dilemma of the ascension into the European Union.

10.2 The European model
This aforementioned dilemma materializes as regionalizing of power is the epitome of legitimacy within the Swedish model, while the globalization of a European membership is the complete opposite. Since European law is de facto superior to Swedish law, instead of sharing her individual sphere with nine million Swedes, the given Swedish individual now has to allocate it into a group of half a billion. Given the conclusion that the individual is supreme, and that even a single intrusion into her rights carries a measure of illegitimacy, this newfound reciprocity is all the more, if not intolerably, invasive.

Parallel with this exponential increase in illegitimacy, the European Union has de facto devised several institutions to reinstate justification. These institutions include the, in Sweden already existent, principles of subsidiarity, proportionality and transparency, along with an institutional equilibrium. However, despite these instruments of combating illegitimacy on a European level, the best case scenario remains a return to the Swedish model. This is to say a return to the original displacement of power. This effectively means that the optimal outcome for the European Union is simply no further illegitimacy. It has no way of lessening the lack of legitimacy already inherent on national levels.

If there is one potentially revolutionary instrument in the European Union it is the voluntary membership. This institution signifies the opportunity for the obstinate member-state to depart from the Union, should it no longer find membership appealing. This consequently entails a great measure of legitimacy since all members who are affected by the exertion of power of the European Union, are so by choice.

Had there been a corresponding tool on an individual level, the problem of innate illegitimacy would be solved, as any individual unwilling to acquiesce to the demands of society could simply exit it. However, on a state level, this model seems less than plausible as any state would be reluctant to vindicate ‘outlaws’ within their territories. Furthermore, in Sweden there seems to be no necessity for such a measure.

Since there is no such instrument available, the Swedish model will have to be one of not only having to reassert its own jurisdiction within the European Union, but also to assure its individuals an effort to reduce illegitimacy on a national level, which is best attained through the regionalizing of power.

10.3 Swedish Contentment
As was illustrated in the graph in chapter eight, the Swedish support for this representative system is unparalleled. This lessens the illegitimacy so inherent to this system and shows that it is, at least partly voluntary. Now, whereas the fundamental point of this paper is that total legitimacy is unlikely to occur within such a system, since the unyielding stance of a single individual suffices to create illegitimacy, still, the more individuals who acquiesce to this order, the greater the legitimacy and the lesser the illegitimacy.

Equally verified by the graph, was the fact that in spite of the strong support for the Swedish model, there was in fact a significant minority who were disinclined towards it. This establishes that even in the most popular of societies, there is bound be discontentment.
Again, the opportunity for an optional membership, or citizenship, offers a theoretical solution to this dilemma of discontentment, but in actuality it is an abstract notion without any palpable feasibility. Still, the Swedish populace, through its acceptance, offers a considerable measure of validity to the Swedish model and subsequently to the European. And whether this acceptance is one of rejoicing compliance or of defeatist passivity, ultimately an acceptance from the people, of a model which intrinsically carries a measure of illegitimacy is perhaps the best justification such a model can ever attain. Even a silent reluctance entails an acceptance of sorts. As such, some legitimacy is derived thereby.

There has never been a civil war in Sweden, nor has there ever been a genuine internal revolution. Again, this signifies contentment with the Swedish model, which in contrast has proven itself to be relatively state-of-the-art in safeguarding the rights of its individuals. By comparison, the authoritarian, Chinese regime and the Russian elitist society, both present an illegitimacy extending far beyond the Swedish. Whether this is exclusively a comfort or a reason for disturbance is perhaps best reserved for another essay, still the conclusion is that internationally, the Swedish model is an enviable one and although its illegitimacy can not be avoided entirely, the acquiescence of the individuals; of the people, constitutes the most extensive legitimacy available. It would seem that the Swedish contentment or contentment per se is the key to legitimacy.

10.4 In Closing
In closing, an attempt to answer the questions asked in the abstract of this essay will be made in accordance with its conclusions:

a) If the individual dignity and freedom is pivotal, how do you ever legitimize its compromise?

This essay has concluded the necessity for the state and its power to be unavoidable insofar as it is a requirement for orderly individual interaction. And whereas this inherently equates a displacement of power and subsequently illegitimacy, it also assures the individual its fundamental rights, wherefore a popular acceptance is in effect. On the foundation of acceptance, a legitimacy which is far from complete is still kept at an agreeable level.

b) Since the individual is born into this system, how is this coerced cooperation legitimized?

Since the individual does not have the choice to exit Swedish society without exiting its territory, the citizenship is not voluntary. As such, there is coercion in the displacement of power. This coercion is also, if not perfectly, then at least sufficiently legitimized by popular acceptance. Even if the people have not chosen to be part of Sweden, they have not chosen to rebel against it either. And since a voluntary citizenship is less than plausible, this acceptance, in all probability, offers the greatest legitimacy.
c) If this system is insurmountably illegitimate, how come it functions in actuality?

Despite the notion of inescapable illegitimacy, the Swedish populace is relatively content in their position. Perhaps legitimacy is not the paramount concern of the Swedish individual, perhaps it is not considered completely feasible or perhaps it is considered worth sacrificing for the warranty of safety that the powerful state issues. However, the conclusion is still that the Swedish model does not have to contain perfect legitimacy for it to function. Or paraphrased, the legitimacy within the Swedish model is indeed sufficient for the average Swedish individual.

d) With the further displacement of power constituted by the membership of the European Union, how extensive can the displacement of power be before it is completely illegitimate?

The ascension into the European Union and the superiority of European law over Swedish law has indubitably created a further displacement and greater illegitimacy. Still, with the array of instruments for restraining and monitoring said displacement, Sweden is very much enabled to retain power within its own boundaries and to keep distributing it unto its municipalities. Given this ability to combat displacement and illegitimacy, the Swedish model seems very capable of retaining legitimacy at a sufficient level and to keep the individual satisfied, which is ultimately the very core of any legitimacy based upon popular input.
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Doctrine


