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Election Falsifications without Proofs: Problem of Power Legitimacy

Abstract

The legitimacy of power is a feature of authority, which is obtained and exercised in compliance with human rights and principles of legality. Election, in democratic states, is a way of achieving power, when people give power to persons whom they consider to be honest, just and able to rule the state. There are various conditions and types of the legitimacy of power according to M. Weber, D. Beetham, J. d'Aspremont and others, but prerequisite to recognize that power (legitimacy of power) are results of elections which are considered being fair. In my opinion, contemporary elections have a significant impact on recognition of the power legitimacy. International community recognizes the legitimacy of power relying on voting results as a decision of citizens. Problem of power legitimacy in case of falsification of the election results is hidden information about it. Often there is no documentary proofs considered that results are falsified. Authorities have too much impact on recognition of legitimacy and citizens often don't have possibility to prove illegitimacy. If legitimacy is regarded as equivalent to legality, then its other characteristics are dismissed. In this paper the legitimacy and the legality are divided.

Falsifications violate human rights and such power can't be recognized as legitimate. Persons who achieve power in an unfair way usually conduct unfair politics. In the paper positions of aforementioned scholars concerning the legitimacy of power, election reality and contemporary process recognition of the legitimacy are analyzed.

Types of the legitimacy taking into account the election results, hidden information about falsifications, counterfeit legality, fundamentals of power legitimacy according to natural law viewpoint and people's positions to power legitimacy.

Elections falsifications without proofs is background for recognition of illegitimacy of power. This research is a new viewpoint on the problem of the legitimacy of power.

Introduction

The paper discusses a problem of the legitimacy of power when results of elec-
tions are falsified. At first glance, it may seem that there is no problem, but this
is not true. For state authorities in democratic states it is very important to be
legitimate or be treated as such. It is important for the power to do everything for
legitimacy and elections are the first main step. If the governed believe in legal-
ity of elections, they believe in correctness of results and recognize power. Here
there is a beginning of the problem, because providing visible legitimacy gives
reasons for citizens to accept power, but if elections actually were falsified the
power couldn't be recognized as legitimate. In case of visible legitimacy the gov-
erned accept power that is actually illegitimate. Currently the legality of elections
plays an important role, but the legitimacy of power has another one important
condition – the consent. The legitimacy is in very close relations with power in
every state. It is some kind of guarantee of power acceptance by the citizens, even
if their political activity is unlawful. The legitimacy of power must be with com-
pliance by authorities all conditions of it. Legitimacy of power is a compulsory
element of democratic states. Tyler notices that

   [...] legitimacy is important because seeking to govern a society or manage an organi-
   zation based upon the possession of power alone first requires enormous expendi-
   tures of resources to create a credible system of surveillance through which to moni-
   tor public behavior to punish rule violators.[1]

The aim of this article is to clarify the problem of the legitimacy of power chosen
in the way of falsifications of election results. The first part of this paper introduc-
es what the notion "legitimacy" means and characterizes two main conditions of
the legitimacy of power. The second part gives distinctions between legitimacy
and legitimation or legitimization, determines dimensions and types of legitima-
cy. The third part is designed to describe understanding of free and fair elections
and electoral legitimacy. The fourth part is about reasons of election falsifications
and legality (true and visible) as a basis for recognition of authorities` legitimacy.
This part also introduces forms of non-recognition and defines the legitimacy of
power of governments who get it through election falsifications. The conclusion

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[1] T. R. Tyler, "Psychological Perspectives on Legitimacy and Legitimation", *Annual Re-
view of Psychology* 2006, Vol. 57, p. 377.

presents contemporary reality of the legitimate-illegitimate power and importance of compliance conditions of the legitimacy.

The legitimacy of power: common conditions in various notions

What is legitimacy of power? The notion of power legitimacy has few various meanings. They are not very different, but they show legitimacy from different sides. It makes understanding of this notion more comprehensive. In order to know exactly what legitimacy means is important to distinguish the idea of legitimacy and common conditions of this notion.

Legitimacy comes from the Latin word "legitimus" that means legal, nomothetic (something in accordance with the law). This term can be separate on two understandings (treatments). Power legitimacy *sensu stricto* means that power is legal (under the law) and *sensu largo* includes legality and citizens' moral and psychological perception of power. In tractates of Marcus Tullius Cicero,, Roman political theorist and philosopher, notion "legitimate" is used to describe conformity of the power (potestas, imperium) to law in such expressions as "potestas legitima", "legitimum imperium."[2] Hobbes and Locke based the legitimacy of state authority on the consent of those who are ruled. "For Locke, authority is far more limited and provisional than for Hobbes, who argued that, in the absence of government, rational parties would find life so miserable that they would freely consent to an absolute authority that would secure and maintain order."[3]

The grounds of the modern approach to legitimacy lie in the writings of German sociologist, philosopher, and political economist Max Weber. According to M. Weber legitimacy is a recognition of particular social relations, which determines individual orientations on social relations. M. Weber distinguishes two main conditions of power legitimacy: absolute majority of state citizens must recognize power authority and conscious human duty to obey influences of supremacy.[4]

Theorists from Weber have viewed legitimacy as a vital component of social institutions. Weber argues that social norms and values become a part of people's internal motivational systems and guide their behavior. As a result, "control by others is replaced by self-control, as social norms and values are internalized and become part of the individual's own desires concerning how to behave."[5]

David Easton, Canadian political scientist, in his conception of political system theory noticed that the most important element in the legitimacy is faith,

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[2] O. Vysockyj, „ Poniattia legitymacii politychnoi wlady: sutnist i zmist", [online] http://archive.nbuv.gov.ua [access: 17.12.2015].

[3] Encyclopedia Britannica, *Consent and Political Legitimacy*, [online] http://www.britannica.com/EBchecked/topic/133362/consent [access: 10.01.2016].

[4] M. Weber, *Politika kak prizwanie i professia*, Moskwa 1990.

[5] T. R. Tyler, op. cit., p. 378.

which leads to social trust and support, particularly in democratic states. D. Easton argues, "legitimacy is a conviction of participant that it is proper and satisfied to perceive and submit power and follow requirements of regime."[6]

British social theorist D. Beetham considers that "the legitimacy is the right to govern and the recognition by the governed of that right."[7] For D. Beetham legitimacy is "the moral justifiability of the power relations bound up in the state and its justice system – conformity to people's values, its ability to satisfy public interests and normative expectations, and in the legality of power."[8]

> Legitimacy is the capacity of a rule to pull those to whom it is addressed toward consensual compliance. States determining whether or not to obey the law, usually take into account their interest in the law as such, quite aside from whether, in any particular instance, the rules serve the national interest in the law as such, quite aside from whether, in any particular instance, the rules serve the national interest by validating a desired outcome.[9]

M. Suchman argues that legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions. Kelman and Hamilton argue that when an authority is legitimate, "the duty to obey superior orders" replaces personal morality, with people allowing legitimate authorities to define the boundaries of appropriate behavior in a given situation. Hurd considers that legitimacy is the perception that one "ought to obey" another.[10] Hence he offers an understanding of legitimacy as "an additional form of power that enables authorities to shape the behavior of others distinct from their control over incentives or sanctions.[11] According to J. Habermas the concept of legitimacy is generally bound up with the right to be recognized, to have remit over a certain area of life.[12]

German philosopher and psychiatrist Karl Jaspers as power legitimacy understands the domination of citizen's trust in power. W. Hinsch makes a useful distinction between concepts of legitimacy and conceptions of legitimacy. According to Hinsch "concepts of legitimacy tell us what means to say something is legitimate. Conceptions of legitimacy specify the criteria that have to be met in order to be legitimate."[13]

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    [6] D. A. Easton, *System Analysis of Political Life*, Chicago 1979.

    [7] D. Beetham, *The Legitimation of Power*, London 1991.

    [8] Ibidem.

    [9] T. M. Franck, "The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium", *The American Journal of International Law* 2006, Vol. 100, pp. 88–106, [online] http://www.jstor.org/stable/3518832 [access: 5.01.2016].

    [10] T. R. Tyler, op. cit., p. 377.

    [11] Ibidem, p. 377.

    [12] J. Habermas, *Communication and the evolution of society*, Boston 1979.

    [13] W. Hinsch, "Legitimacy and justice", [in:] *Political legitimation without morality?*, ed. J. Kuhnelt, London 2008.

Italian historian and journalist G. Ferrero stated that legitimacy combines two ideas of legality (accordance with the law) and consent (an act of permitting something to be done or of recognition of some authority). Legality describes actions of persons who govern and consent describes actions of persons under government.[14]

The power of legitimacy is an ability of government to create and support citizens' conviction that state authorities have right to make decisions imperative for citizens. Legitimacy is the main condition of political power in democratic states Legitimacy is not just an excuse for power but it is a justification of that power.

Legitimacy of political power includes perception of citizens and international community that the power is legal and willingness to recognize and accept authorities. The main part of citizens must accept this power.

In accordance with D. Beetham's opinion, legitimacy consists of three connected elements: normative, ideological and moral. The normative element is customary and legal rules dominating in social group. The ideological element is understood as conviction which is generally accepted by the social group and authorities. If a power founded on legal norms has support in people's conviction that is the legitimacy of power. According to D. Beetham the legitimacy of power has two main conditions: legal basis and people's support. The moral element means citizens' agreement to be governed by chosen authorities.

To sum up and reduce views on the legitimacy of power, I may argue that S. Lipset considered that "power legitimacy is a quality and potential of political system as the best."[15] C. Barrow understands legitimacy of power as readiness of citizens to perform orders of rulers; according to T. Parsons legitimacy is an efficiency of power.

The legitimacy has different approaches according to positive and natural law. In consonance with concept of natural law the power is legitimate when it receives legitimacy without violence, with respect to human rights. The consent to accept power has to be conscious and also has to be based on procedures in accordance with the law. Falsifications break justice, in other words it is a violation of justice. From the viewpoint of natural law, all violations of human rights make power illegitimate. Election falsification is a direct violation of natural and political rights. The oldest definition of law says: "Law is the science of what is good and just" ("ius est ars boni et aequi"). A famous German legal scholar and politician Gustav Radbruch once said: "the idea of law is justice". In Dvorecki dictionary the word "legitime" is synonymous to the word "just."[16] Thus, the activities which contradict justice could not be legal.

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[14] D. Valades, *Kontrol nad wlastiu*, M. Idea Press 2006, p. 34.
[15] S. M. Lipset, *Political Man: The Social Bases of Politics*, Baltimore, Maryland 1981.
[16] I. H. Dvoreckij, *Latynsko-rosyjski slownik*, M. Russkij jazyk 1976.

Another concept is the positive conception of law and legitimacy of power. This school is represented by R. Ihering, who considers that every state authority is legitimate because power itself constitutes what is legitimate. To properly understand the law is the politics of state authority. According to the natural conception of law, this definition of law and power legitimacy gives legitimacy to illegitimate power. It does not matter in which ways power was received, in accordance with the law and human rights or not, because decision about power legitimacy is held by power. Treatment of legitimacy from positive perspectives reduces or even excludes important condition of legitimacy which is the consent of citizens.

Legitimacy in natural law perspectives can be identified with rational legitimacy. Rational legitimacy has place where state power complies with the law, never restricts natural human rights and all administrative actions have strictly legal nature.[17]

To sum up, common conditions from different notions of the legitimacy of power could be distinguished. The legitimate power is obliged to perform all these conditions. The legitimacy of power is a connection of activity and behavior of citizens and power (the governing and the governed). It is a right of authorities to govern and agreement of citizens to be managed by them. First condition provides the governed free will to recognize and accept power which they trust. Second condition is strictly legal and means that a power must in all cases act according to the letter of law. It is obligatory for the power to possess these two conditions to be recognized as legitimate.

The legitimacy of power: dimensions and types

What dimensions and types have the legitimacy of power? Legitimacy of power has few different dimensions and types. Types of legitimacy occur from appropriate dimension of legitimacy. According to Max Weber there are three sources of legitimacy: tradition, charismatic and legal or rational, but only one is a prerogative of democratic states. As stated by David Easton there are ideological, structural and personal dimensions of legitimacy. According to Muller "legitimacy sentiments manifested toward authorities and regime may derive from several different sources: from underlying ideological principles, from attachment to the structure and norms of the regime as such, or from devotion to the actual authorities themselves because of their personal qualities."[18] According to T. L. Shabo there are democratic, technocratic and ontological sources of legitimacy and only democratic sources provide for elections. G. Ferrero extracts only two sources (types) of legitimacy – monarchy and democratic, in which we are interested.

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[17] V. Bachynin, V. Jurawskyj, M. Panow, *Filozofia prawa: Slownik*, Kyiv 2003, p. 174.

[18] E. N. Muller, "Correlates and Consequences of Beliefs in the Legitimacy of Regime Structures", *Midwest Journal of Political Science* 1979, Vol. 14, No. 3, pp. 392–412, [online] http://www.jstor.org/stable/2110312 [access: 10.01.2016].

According to Max Weber there are three types of legitimate rules, which can be mixed. There is charismatic, traditional and legal authority, but the most important for legitimacy is the legal authority. Traditional authority based on beliefs in sanctity of orders and governments exists long since (what has always existed). Charismatic authority is based on the devotion to the charisma of the leader first of all because of his magical powers, heroism, strength of spirit and words. Legal authority exists thanks to prescribed rules. Only legal authorities are appointed or elected by legal procedure, the first and the second one are based on beliefs and trust without using any legal electoral procedure with competition between candidates and rights to free will and free choice.

In overview of political philosophy, Hinsch identifies two concepts of legitimacy. The first is the empirical concept of the social sciences. The second is the normative concept of political philosophy. The empirical concept goes back to Weber, for whom legitimacy denoted the recognition of a norm, law or social institution. As Hinsch states: "Since no political regime or social order could persist without a fairly high level of unenforced compliance with its rule, the empirical understanding of legitimacy naturally occupies a central place in explanatory theories of social order."[19] In contrast,

> [...] the normative concept of legitimacy sets out 'objective' criteria, according to which an authority or institution is legitimate not because of the subjective state of mind of those it governs but rather because the arrangement meets certain substantive requirements (usually requirements of justice and rationality). Normative legitimacy means substantive recognition that the truth (or validity) of these arrangements is right and just.[20]

G. Ferrero divided the sources of power into four types; it is legitimacy, illegitimacy, before legitimacy, quasi-legitimacy. These types of power sources depend on combinations of legality and consent. Legitimacy combines legality of power realization and consent from people's side; illegitimacy combines illegality and discordance; before legitimacy combines legality and discordance; quasi-legitimacy combines illegality and consent.[21]

The most convenient division of power legitimacy was made by J. d'Aspremont. He distinguishes legitimacy of origin and legitimacy of exercise. The legitimacy of origin is the manner in which a government comes to power. The legitimacy of exercise is the way in which a government exercises its power.[22] Legitimacy of origin and legitimacy of exercise are types of legitimacy but they

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[19] W. Hinsch, op. cit., p. 40.
[20] Ibidem, p. 42.
[21] D. Valades, op. cit., p. 36.
[22] J. d'Aspremont, E. De Brabandere, "The complementary faces of legitimacy in international law: the legitimacy of origin and the legitimacy of exercise", *Fordham International Law Journal* 2011, Vol. 34, issue 2, p. 193.

can be interpreted also as elements of complete legitimacy. State authorities are obliged to act according to the law during elections and realization of government functions. Recognition and acceptance is not a temporal condition, but an ongoing one. Legitimacy can vary because of impact of different aspects. For instance, in J. d'Aspremont theory he argues that "the effect of the legitimacy of origin test has been confined to a qualification role, whereas the legitimacy of exercise has been confined to a disqualification function."[23] It means that power after achieving a victory in the elections (free and fair) can be recognized as legitimate, but during the process of realization the government functions can be recognized as illegitimate because of breaking the law or violation of human rights. During executing their aims by the authorities there may occur a situation in which information appears about falsifications on elections that were considered fair and free, and gave reasons for people to recognize power on previous stage of the elections.

J. d'Aspremont notes that "it is important in the context of the legitimacy of governments, the distinction between legitimacy of origin and legitimacy of exercise only concerns the external – and not the internal – legitimacy of a government."[24] From the standpoint of democratic legitimacy of origin, a government is legitimate if it rests on the "will of the people", expressed through a free and fair electoral process. "From the vantage point of democratic legitimacy of exercise, a government is legitimate if it exerts its power in a manner consistent with basic political freedoms and the rule of law."[25] This position is very close to the position of natural law treatment of the legitimacy of power.

When we are speaking about legitimacy the question of distinction between legitimacy and legitimization occurs. What is the legitimacy of power and legitimization of power, what common characteristics and differences have these two notions?

Many problems arise with dividing concepts of the legitimacy of power and power legitimatization. These concepts are not the same and have some ambiguity. This paper takes into consideration the legitimacy of power which includes legal (according to law) procedures of elections and citizens' recognition of power. The first is a formal-law criterion and the second is a moral social-cultural criterion of the power. To explain clearly, the legitimacy of power is a result and power legitimization is a process of achieving this result. The legitimacy of power has background, previous stages which includes the process of legitimization. There are procedures of election, counting results and realization of power – all of these steps are in a process of legitimization. The results of legitimization is

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[23] J. d'Aspremont, "Legitimacy of Governments in the Age of Democracy", *New York University Journal of International Law and Politics* 2006, Vol. 38, p. 910.
[24] J. d'Aspremont, E. De Brabandere, op. cit., p. 193.
[25] Ibidem, p. 207.

not permanent, but changing. According to J. d'Aspremont`s types of legitimacy, legitimacy of origin is a result of procedure of electoral legitimization. If elections are really free and fair and citizens recognize power then a government becomes legitimate. First is a process and second is a result. In case of legitimacy of exercise process, the legitimization includes ways of power realization and it must perform condition of legality and condition of consent. The legitimate power is a power constituted by law and acting according to the law. Synonymous to this word is legal, legality. In this case, law is only one criterion. The power legitimacy strict is a legitimate power, so these concepts are coherent but not identical. A term legitimate also is used to describe a power which has legitimacy in full sense with presence of two obligatory conditions – legality and recognition. In this paper, legitimate power means a powerwhich performed two main conditions of the legitimacy of power.

Power legitimization is a process of giving power legitimacy, acquirement of social amount by the political power. J. d'Aspremont noticed that

> [...] in the context of democracy, it is submitted that the legitimacy of origin addresses the procedural elements of democracy that ensure that the authority originates in popular sovereignty through free and fair elections. On the contrary democratic legitimacy of exercise rests on some of the substantive elements of democracy. The application of the distinction between legitimacy of exercise and legitimacy of origin in the context of democracy thus presupposes the existence of a substantive understanding of democracy.[26]

The legitimacy of power is a result of legitimization process. In democratic process, there is only one way of legitimization, which is elections. For instance, the process of receiving legitimacy in democratic states, where are elections as only one way of obtaining power, is called the electoral legitimization. C. Hacker-Cordyn notices that electoral legitimization in legal constituting and inclusion system structures is the endpoint of democratic promises. O. Prokopyev says that electoral legitimization is a method and technology of giving legitimacy to power, when elections are a reason for social recognition of power legitimacy.[27]

Electoral legitimization is a process of getting electoral (referendum) legitimacy owing to realization of subjects of the electoral process and electoral law principles of democracy during the process of elections of public authorities (decision-making) implementation of legitimization methods and technologies, which resulted in transformation of trust in support to government by voting or other types of conventional participation.

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[26] Ibidem, p. 205.

[27] O. Prokopyev, "Conceptualizing electoral revolutions: challenges and promises", Paper to be presented at 2nd Annual Doctoral Conference 2007, [online] http://web.ceu.hu/polsci/ADC/2007/ [access: 17.12.2015].

M. McMurchy speaks about the electoral process's moral legitimacy, which arises from the facts that it exists and it is accepted as a law, what is reasonably just, and that possibility to a better electoral process would be difficult if not impossible to achieve.

In my opinion, we can extract two steps of receiving the power legitimacy: the first is faithful elections, and the second – Weber's conditions of legitimacy availability. Citizens can't ignore a power whicht is de iure legal, and they consciously perform their duty according to Weber's second condition of legitimacy. Paying attention to free and fair electoral process is important because it is a main step to the power legitimization.

Free and fair elections and election falsifications

Nowadays, in many countries, bodies of state power are elected in elections. The recognition of authorities chosen in elections by society and international community makes them legitimate. Victory in elections and the recognition of power is the next step to legitimacy; the first one is the elections, where citizens express their opinion about power which is desirable for them. Then a question arises: is the power elected with using falsifications legitimate? Can the power that violates human rights, especially the right of free choice, be legitimate?

During the elections in one country or another, citizens and international community attempt to ensure that there is observance of justice, democratic elections, and it is possible to make a free choice. If there are proofs of falsification of the elections results, elections are declared to be invalid, and power can't be recognized as legitimate. If, for example, there are no proofs of falsifications, but they become a starting point of rising power in an unfair way,could this power be recognized as a legitimate one? Probably no. Many questions arise about what means really fair and free electoral process. Does the result of electoral legitimization affect the legitimacy in fact or the visible legality only?

Under Article 28 of United Nations Universal Declaration of Human Rights the will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. It gives us an important conclusion that the only way for power to receive legitimacy is elections, speaking about democratic states. By resolution 45/50 of 1991, entitled "Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections" the U.N. General Assembly stressed the conviction of member states that:

> [...] periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that as a matter of practical experience, the right of everyone to take part in the government of his or

her own country is a crucial factor in the effective enforcement by all in a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights.[28]

Currently elections are the most democratic way of electing state authorities but Antisthenes had a different opinion. According to Antisthenes, the state cannot be good when a simple act of voting can make untalented people chieftains. Such an act of voting has the same power as a decision to consider that donkeys are horses.[29] When people can't distinguish bad and good people, this is the reason of destruction of states. In various ways we can realize these words by disciple of Socrates quotable, but definitely we can say that Antisthenes calls in question voting as a way of choosing power, because of possible falsifications.

Another problem of the recognition based only on legality of elections arises. The governed recognize power because of its visible legitimacy which is for them the main reason for the recognition. Legality creates legitimacy, because of people's beliefs in honesty of received power in legal elections according to the letter of law and that elected power is a choice of majority, people willy-nilly recognize and submit to authorities. N. Bobbio connects Weber's and Kelsen's positions and states that: "for Kelsen only power which has legitimacy is effective, for Weber power has legitimacy when it's effective. Power and law are going arm-in-arm. Power receives legitimacy through the law, when the law becomes effective through the power."[30] In accordance with election law a person receives power because of getting majority in the election. The governed often recognize not the power but the choice of the majority. For people election results are significant. When in voting process the majority vote for one candidate or party, but another candidate wins, they recognize authority with conviction that their choice was in minority. According to J. S. Mill majority is a really bigger part of society or not numerous but more active one. The latter consists of people who succeed to compel others to recognize their majority.[31] The source of the power plays an important role in power legitimacy at all. Elections in a democratic state are that source what make it like the first step to the power legitimacy. Organization of election process is a prerogative of acting authority and they have opportunities to falsify results of voting without spreading this information among voters. Candidates for authorities have possibilities for making falsifications of voting results and the voters can't get information about it and they partly unconsciously recognize the power by giving legitimacy to it. Why is it a problem? On the one hand often power what

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[28] Resolution 45/50 of 1991, "Enhancing the effectiveness of the principle of periodic and genuine elections" the U.N. General Assembly, [online] http://www.un.org/documents/ga/res/46/a46r137.htm [access: 16.01.2016].

[29] V. Kremen, V. Iliin, *Filozofia. Myslyteli, Idei, Koncepcii*, Kyiv 2005.

[30] D. Valades, op. cit., p. 44.

[31] J. S. Mill, *O svobode*, Moskwa 1991, pp. 11–12.

affectedly have legitimacy really is not such, on the other hand power affectedly with legitimacy can't be changed in easy way or can't be changed at all until the next elections. To conclude, passive behavior of voters is consequential in soft role of recognition and legality of elections is a main reason for them to recognize power. International community opinion about power legitimacy much depends on citizens' opinion and recognition and has soft impact too.

When later information about falsification of elections appears, authorities chosen in free elections could be called fundamentally illegal legitimate power. Differentiation between legitimacy and legality plays an important role because currently often only affectedly legality is premise of power legitimacy. For instance, one of the effective methods to introduce public opinion that voting results are falsified is a protest or other public actions. It is an effective method to show position of citizens to the international community.

What we understand as free and fair elections? When we speak about legitimacy of power on the one hand there is authority and on the other hand there are citizens. The legitimacy of power is some harmonious combination between what the citizens want and what the authorities do. The citizens want to have a good government which acts accordingly to people's needs and the authorities have to act under the law and people's will, relying on freedom and natural human rights, not on their private interests. David Hume in his tractate "Power and freedom" wrote that in any state governance exists internal fight, open or secret, between power and freedom: neither the first nor the second is unable to win in this competition. People who want to be chosen in elections often act contrary to principles of freedom (author – in particular freedom of choice).[32] Lord Acton considers that freedom is a prime political value and understands freedom as a guarantee that everyone in acts according to view of their own duty will be protected from the pressure of power and majority, customs and conventional views.[33] "Free and fair elections necessarily go hand in hand with respect for human rights."[34] Free electoral process is connected straight with citizens will. The will in materialistic philosophy position is seen as conditioned by system of social relationships higher level of individual activity, which provides ability to make conscious decisions.[35] According to this definition the notion "will" has two main aspects, individual activity and conscious decision. Elections are free when people have possibility to decide without any outside influence and recognize power according to their own free will.

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[32] *Konservatyzm*, Kyiv 2008, p. 643.

[33] Ibidem, p. 645.

[34] J. d'Aspremont 2006. Legitimacy of Governments in the Age of Democracy. *New York University Journal of International Law and Politics (JILP).* vol. 38, p. 914.

[35] Bachynin, V., Jurawskyj V., Panow M. 2003. *Філософія права: Словник. –* Київ. Концерн «Видавничий Дім «Ін Юре», p. 54.

Election must be fair and foresee that legitimate power (future power) have to be just. Legitimacy has power, which fundamentally is just in achievement and realization of power. Legitimacy means that political power, methods and purposes correspond with universal values. The legitimacy of power must be a guarantee of following human rights. The legitimacy of power, which consists of recognition by society and international community, is an indispensable condition for every authority. "Legitimate origins entail a free and fair electoral process, so foreign states can typically just rely on the accounts of elections monitoring missions sent by international organizations to quickly make their decisions."[36] "The recognition of the government of a foreign state involves a test of legitimacy,"[37] but this test often focused on legality (what can be visible) and position of majority (what could be falsified). "If a new government secures international recognition or its delegates are accredited, it qualifies as the legitimate representative entitled to speak and act on behalf of the state."[38]

Reasons for making falsifications and aspiring to achieve the legitimacy. Forms of non-recognition and the artificial legitimacy

I can distinguish the following reasons of making falsifications in elections: desire to gain power, guarantee to get power, easier way in receiving majority. The secrecy of falsification is needed for getting at least a visible legality of elections and as a result for getting legitimacy. Governments need legitimacy for international relationships with foreign countries and for opportunity to govern citizens (particularly, oppositional "minority"). The classic argument of political and social theorists has been that for authorities to perform effectively, those in power must convince everyone else that they "deserve" to rule and make decisions that influence the quality of everyone's lives. In other words, "every authority system tries to cultivate a belief in its legitimacy."[39] Central to the idea of legitimacy is the belief that some decision made or rule created by these authorities is valid in the sense that it is entitled to be obeyed by virtue of who made the decision or how it was made. Tyler pays attention to the connection between legitimacy and moral values. "Legitimacy is a perceived obligation to societal authorities or to existing social arrangements. Moral values are personal standards to which people attempt to align their behavior."[40] People can be against the elected authorities, but they can't be against the law and observing the law becomes a moral value highert than opposition to unacceptable power. "Often moral values and

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[36] J. d'Aspremont, op. cit., p. 913.
[37] Ibidem, p. 901.
[38] Ibidem, p. 909.
[39] T. R. Tyler, op. cit., p. 377.
[40] Ibidem, p. 390.

legitimacy work together. For example, with most everyday laws, people obey the law because they feel that they ought to obey legitimate authorities and because they believe that the conduct prohibited by law is morally wrong."[41] However, they do not always work in concert. "Past studies show that people follow rules when they think those rules accord with their moral values."[42]

There are two prime conditions of the legitimacy of power defined in the beginning - free will of the governed to recognize and accept power, which they trust and power acting according to the law in all cases. The problem of legitimization process (legitimization of power) of elections is visible legality and as a result becoming prerequisite of recognition the legitimacy of power. Really free and fair elections (which only have to be during legitimization process) do not involve visible legality. The above-indicated gives possibility to make important point for issue of this paper conclusion and divide form of power non-recognition. Even if power is legitimate it can exist without availability of one or even two conditions of the legitimacy of power. We can distinguish two forms of power non-recognition: active and passive. The first one, active, I called *non-recognition protest*, while passive is called *non-recognition subjugation*. Non-recognition protests have place when elections are declared to be legal, but in fact they are unfair and, what is the main point, people don't recognize power, choosing the way of protest. Then power doesn't get legitimacy and international community doesn't recognize authority. Second form is passive – non-recognition subjugation, when elections are declared to be legal, but citizens don't believe in it. They choose the way of subjugation, because of many reasons, for instance, because of lack of faith that it can be changed and the belief in legality of next elections. There can be mentioned third form of non-recognition *deceptive recognitions* which occurs when voters believe that elections were legal, without falsification, but in fact elections results were falsified. People, relying on widely-known information that elections were fair, recognize power. Recognition is the way to legitimacy, so power gets legitimacy ground on unfair unknown fact of election results falsification.

This separation makes possible to speak about the artificial legitimacy of power which appears in case of non-recognition subjugation and deceptive recognition.

Distinguishing forms of non-recognition and new type of legitimacy – the artificial legitimacy of power, can help to characterize current situation with power legitimacy in different states. Currently elections can't be identified as one right method for providing the legitimacy of power. Seeing also important is legitimacy of origin (in electoral legitimization process), legitimacy of exercise and form of recognition. It is fundamental to know the way in which the governed recognize power, because

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[41] Ibidem, p. 395.
[42] Ibidem, p. 390.

legitimacy depends on the type of recognition. As noted by J. d'Aspremont, "despite the prominent role played by elections in legitimizing governments in contemporary practice, the 'monopoly' of the legitimacy of origin to gauge the legitimacy of governments has recently been curtailed by the growing importance of the legitimacy of exercise. This means that for a government to be seen as legitimate, it must not only be 'by the people' but also 'for the people.'"[43] The legitimacy of power is for governed as guarantee observance of human right by govern and for good freely chosen authority.

Conclusion

Power received in the way of human rights violations is illegitimate from the viewpoint of natural law and legitimate from the viewpoint of positive law. Democratic elections include observance of human rights and true legality. A contemporary reality makes power legitimate-illegitimate because of advantage of visible legitimacy and requirements of true legitimacy non-fulfillment. Legitimate – because there are no proofs of voting falsifications and it becomes legitimate as power gives such condition. Illegitimate this power is a priori because the foundation of this power is voting falsifications. Weber's conditions of power legitimacy say that people have to recognize power authority and perform conscious duty to obey influences of supremacy, but it wouldn't be people's free will when they know about falsifications, but without proofs. It is an example of legitimate-illegitimate power. Forms of non-recognition of power introduce the most important aspect of the legitimacy – citizens' opinion (consent on power). This aspect is momentous for subsequent elucidation problem of real recognition of power and recognition obtained by dishonest ways. The approach suggested here is intended to introduce that conditions of the legitimacy of power must be more obtained and recognized falsification from governed side is more important that legality (visible) of elections presented by government.

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[43] J. d'Aspremont, op. cit., p. 209.

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