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Biological Conservation

Perspective

What is a legitimate conservation policy?

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ABSTRACT

Most conservation actions are part of public policies: they are financed through taxes and are part of policy packages. Consequently, conservation practitioners often have to face challenges to the legitimacy of their actions and expenses. But what is a legitimate conservation policy? This article develops a philosophically qualified answer and explores its application to concrete conservation situations. This approach is anchored in a "performative" interpretation of the philosophy of Rawls, Habermas and other deliberative democracy theorists. The performative approach emphasizes the primacy of practice and the elusiveness of purportedly definitive, purely theoretical definitions of legitimacy. As an application of this approach, a legitimate conservation policy is provisionally defined as one such that: (i) the defenders of the policy have justified it, as a matter of fact; (ii) even if it is not attacked, they are ready to argue to justify it; and (iii) if it is actually attacked, they enact this readiness. A specification of this three-fold criterion is then introduced, by analysing a series of real-life conservation actions or policies. This analysis unveils four widespread mechanisms (opaque procedures, closed circles of experts, denials of knowledge gaps and concealments of ethical debates) leading to illegitimate conservation policies. Identifying these mechanisms and their links with the provisional definition of legitimacy makes it possible to foster the legitimacy of conservation actions and policies. Finally, concrete practical implications for conservation researchers and practitioners are outlined.

1. Introduction

Many conservation actions are part of broader conservation policies. This is the case, for example, of conservation actions implemented as applications of national legislations on the protection of endangered species. These actions take place in a political context: they use public resources that other policies (social, economic, industrial policies, etc.) also strive to capture, they impose constraints on other policies, they deprive citizens or consumers of some liberties or opportunities, they are part of, or are criticized by, policy agendas championed by policy makers running in elections. Consequently, conservation practitioners face challenges to the legitimacy of their actions and expenses almost daily.

How can conservation practitioners ensure that their actions are legitimate, and how can they champion this legitimacy? In a word: what does it mean for a conservation policy to be legitimate? Although there is an extensive literature on legitimacy in economics (e.g. Vatn, 2016), philosophy (e.g. Habermas, 1994; Rosanvallon, 2010), political science (e.g. Bäckstrand et al., 2010), decision science (Landry et al., 1996), management (Suchman, 1995) and legal studies (Bernstein, 2005), the conservation literature is almost silent on these questions. The overwhelming majority of articles dealing with legitimacy in the conservation literature uses the term without a definition and there is

no article specifically accounting for what a legitimate conservation policy is (see online Appendix A). As opposed to its links with ethics, which are rather well developed (e.g. Spash, 2015; Mathews, 2016), the links between conservation biology and political philosophy appear to be largely neglected. This article aims to fill this gap by providing a philosophically qualified answer to the question "what is a legitimate policy, in the specific context of conservation?", which has concrete implications for researchers and practitioners.

For that purpose, some preliminary terminological clarifications are needed.

"Policy" refers here to a set of actions performed or implemented by a political entity: a State, a group of States, a local administration or an institution representing the latter.

A conservation policy is a policy aimed at conserving or restoring a declining species, a community, an ecosystem or a natural or semi-natural site.

An example of a conservation policy is the European Natura 2000 habitat conservation policy (European Commission, 1992) devoted to protect "habitats of community interest" (HCI), listed in an annex of the European legislative document (European Commission, 2013).

An example of a conservation action in this context is the concrete restoration of an area occupied by an HCI.

On this basis, as a provisional definition, a "legitimate" policy can

STEP 1: What does/should the evaluator examine to decide if a policy is legitimate?

STEP 2: What does/should the evaluator take to be the basic determinants of legitimacy?

STEP 3: What criteria does/should the evaluator use to establish if the determinants ensure legitimacy?

States of affairs → A. Output legitimacy (Vatn 2016) ~ substantive theories

Decision-making processes → B. Input legitimacy (Bäckstrand 2010) ~ procedural theories

a. Welfare

b. Higher goods (Taylor 1989) Ex: culture

c. Rights and liberties not codified in law

d. People's effective participation in politics

e. Legality (due process)

(1) Equality of distribution
(2) Effectiveness
(3) Efficiency
(4) Recognition
Etc.

(5) Responsibility
(6) Accountability
(7) Impartiality
(8) Proximity
(9) Fairness
Etc.

✓ Conservation articles mostly refer to input legitimacy: Brechin et al. 2002; Bernstein 2005; Cash et al. 2003. See online Appendix A.
✓ Some accounts (e.g. Suchman 1995) encompass both input and output aspects.
✓ Epistemic theories (Estlund 2008, not represented) focus on processes, not for themselves, but because they claim that good processes guarantee that good states of affairs will prevail

✓ A and B can converge to claim that rights and liberties are pivotal for legitimacy because, in addition to being valuable in themselves, they can be seen as preconditions of good decision-making procedures (e.g. Habermas 1994).
✓ This has led some authors to criticize the procedural vs. substantive dichotomy because procedural theories are unavoidably substantive at some point (e.g. Brettschneider 2010)

✓ Different theories use different criteria to account for how the determinants of legitimacy are materialized and distributed. For example, some welfare-based theories claim that aggregate welfare should be maximized, others that it should be equally distributed.
✓ The list of criteria (1-9) is not exhaustive. (1-4) are more congenial to input legitimacy and (5-9) to output. But the limit is porous.
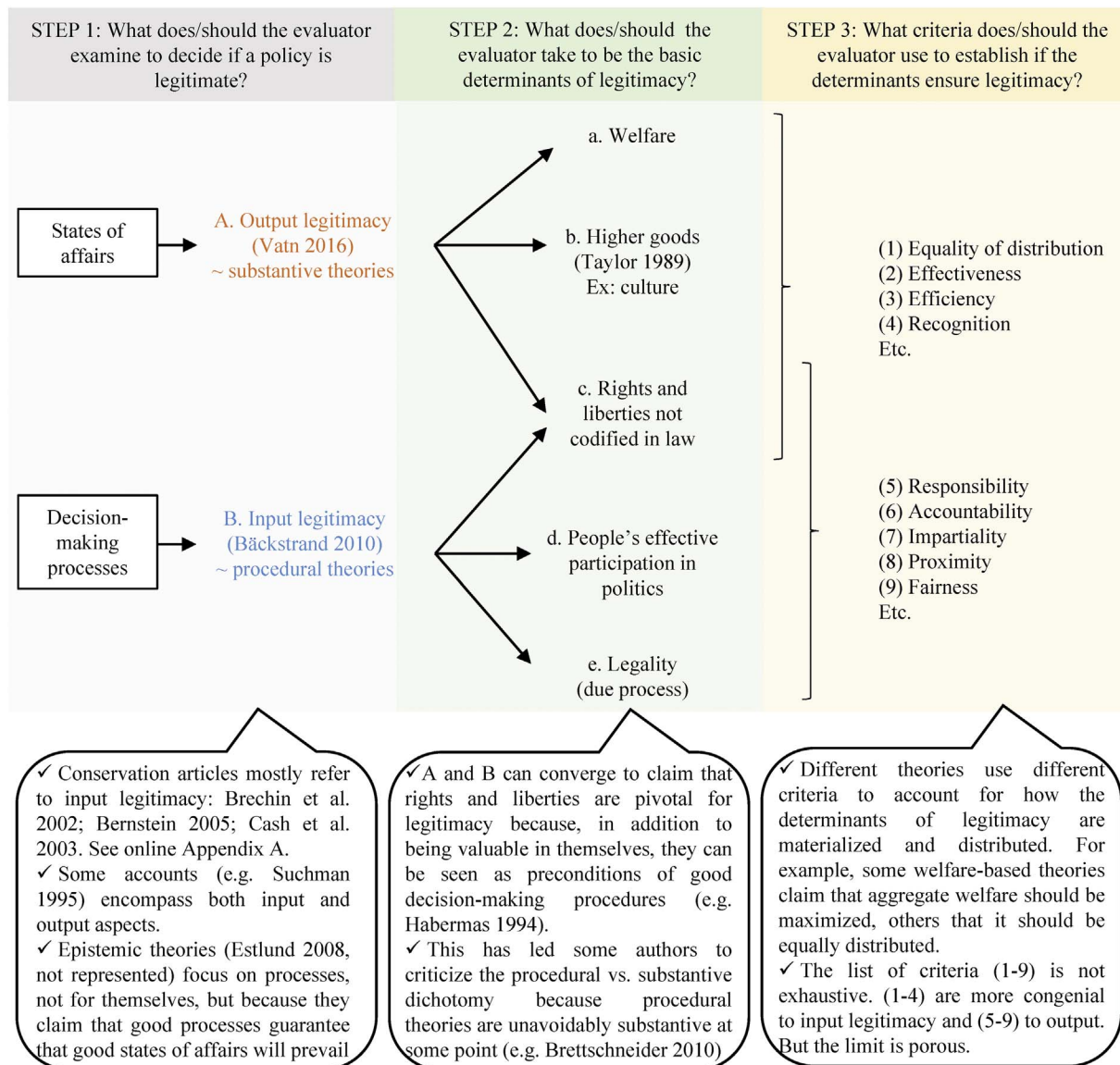
Fig. 1. Key concepts of legitimacy theories and how they relate to one another.
This figure represents a series of steps an "evaluator" follows in making up his/her mind about the legitimacy of a policy. This evaluator can be a member of society whose policy is being evaluated or be an outsider, (Vatn (2016) talks about "internal/subjectivist" and "external/objectivist" evaluations respectively). All the steps in this graph can be understood in a normative or in a positive sense. For the normative understanding, read "should" in the labels of the steps; for the positive one, read "does".
The reader should bear in mind that the figure is not exhaustive, and should be used with caution, because different authors use the same terms with different meanings, and sometimes draw different links between concepts. References are given for some prominent theoretical options represented in the figure (Brechin et al., 2002, Brettschneider, 2010, Cash et al., 2003, Estlund, 2008 and Taylor, 1989)

be defined as a policy such that the political entity did not outreach its role by designing and implementing it, by using public money to finance it, by taking advantage of civil servants to enforce it, and so on. This definition is clear and consensual. But it is also indeterminate: it does not provide concrete criteria to distinguish legitimate policies from illegitimate ones. Numerous theories provide more precise accounts of legitimacy. Fig. 1 schematizes the main concepts structuring this literature. A classical philosophical textbook definition is that a legitimate policy is one that respects existing legislations (e in Fig. 1). But a common conception is that laws evolve thanks to political processes which allow citizens to voice their "legitimate concerns"—referring, for example, to rights that people are denied, or to inequalities which are considered inacceptable. This suggests that, beyond due process, legitimacy is partly determined by rights and liberties which are not already codified in law (c), or by the pattern of distribution of some goods or other features of the state of affairs in a society (a, b). This article is devoted to elaborating a framework encompassing the aspects of these theories which appear to be relevant in conservation contexts.

Another important preliminary clarification has to do with the "normative/positive ambiguity". When stating that "policy P is legitimate", one could mean either of two, very different things. In a first sense, one can mean that P is, as a matter of fact, considered legitimate by a certain group of people—the stakeholders affected by the implementation of P, the constituency who voted for the policy-maker championing P, the tax-payers paying for its implementation, etc. In this first sense, when claiming that "P is legitimate", one is making a "positive claim" – a claim about what empirically is the case: as a matter of empirical fact, those people consider that P is legitimate. Using this terminology, a study empirically investigating which norms a certain group of people endorses and what influences this endorsement (e.g. Del Corso et al., 2017) is a positive study, despite the fact that it is concerned with norms. But there is another meaning to "P is legitimate". As opposed to the purely positive claim above, one can raise a