

# 3

## IS POLITICAL LEGITIMACY WORTH PROMOTING?

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All governments fear a loss of political legitimacy. This fear suggests that they consider political legitimacy to be something valuable—worth holding onto if they have it or restoring if it has been lost. But when there is a loss of political legitimacy, what exactly is lost? Is it necessarily something valuable? This chapter seeks to answer that question by developing and defending a new framework for political legitimacy.

I am proposing a new framework partly in response to the following puzzle. Assessments of political legitimacy are increasingly common in current affairs, and they are often highly consequential. In these debates, everyone assumes that insofar as something lacks legitimacy, that's a bad thing. The expression "that's illegitimate" is treated as self-evidently negative by those of all political stripes, in all contexts. This way of talking makes "legitimacy" unusual among normative political concepts. Other political ideals such as democracy and autonomy tend to attract both fans and critics. An expression like "that's undemocratic" is the sort of complaint that is appropriate only in certain political contexts, e.g., a policy debate but not a criminal trial. Not so legitimacy. The lack of political legitimacy is regarded universally as a defect. At the same time, legitimacy is assumed to be attainable, rather than an unattainable regulative ideal. Things that claim political legitimacy for themselves are not regarded as claiming what is obviously impossible. We could not make sense of how frequently people claim political legitimacy for themselves, and expect to be

believed, unless we consider legitimacy to be attainable. In sum, the lack of political legitimacy is universally seen as a defect that is fixable and worth fixing.

However, most philosophical accounts of political legitimacy treat it as a regulative ideal. Two prominent approaches—voluntarism and contractualism—advance a standard of legitimacy that no society has ever met or could ever hope to meet. If political legitimacy is a utopian ideal, how do we make sense of the lack of legitimacy as a defect that is widely regarded as evidently fixable? To approach the puzzle from another angle, we can ask why we, as philosophers, insist on a standard of legitimacy that is so out of touch? I think it is because we fear that we might have trouble explaining the moral significance of an ideal that is more down-to-earth and attainable. In what follows I take the first steps in vindicating the everyday meaning of political legitimacy, while at the same time showing why legitimacy tracks something of genuine value in political life.

### *Policing the Boundaries of Legitimacy*

Before I begin, I must set the stage by explaining briefly how I view the current landscape. Debates about political legitimacy rely on a shared understanding of what it is and why it matters, but as a matter of fact, a common definition eludes us.<sup>1</sup> In my view, legal and political philosophers have not yet offered a clear enough definition of political legitimacy, as such. There are discussions of political legitimacy in the debates about political obligation and legitimate authority, but they do not take political legitimacy as the target of analysis.<sup>2</sup> Some theorists have proposed conditions for legitimacy in a liberal democracy, without showing exactly why liberalism and democracy are themselves required for legitimacy.<sup>3</sup> Others have discussed legitimacy in the context of human rights or republicanism, but they focus on the necessary conditions for legitimacy, leaving open the question of what would be sufficient.<sup>4</sup> To the best of my knowledge, no contemporary political philosopher has offered a comprehensive theory of political legitimacy.<sup>5</sup> As a result, we lack the philosophical development of conceptual tools that are adequate to its frequent use.<sup>6</sup>

In my view, the relative lack of progress on theorizing about political legitimacy can be largely explained by twentieth-century

disciplinary specialization. The term is now used to mean quite different things by lawyers, philosophers, and social scientists. The sociological approach, exemplified by Max Weber, seeks to explain patterns of obedience in terms of beliefs about legitimacy.<sup>7</sup> The approach of moral philosophers, represented by Rawls and Habermas, seeks to provide normative justification for liberal democracy through elaborating an ethics of citizenship in conditions of disagreement.<sup>8</sup> The approach in jurisprudence, growing out of Hart's conceptualization of a legal system, seeks to account for the authority of law.<sup>9</sup> What unites the three approaches is that they all study the same objects: social organizations that persist over time through upholding structures of power and authority. But their approaches to explanation and justification differ greatly, leading to divergent usage of the term "legitimacy."

This balkanization of academic disciplines has led to the acceptance of a distinction between *sociological, descriptive, or perceived* legitimacy, on the one hand, and *normative or liberal democratic* legitimacy, on the other hand. This distinction is not only accepted by all parties; it is strictly enforced and policed, because it is viewed as a disciplinary boundary.<sup>10</sup> For instance David Beetham, the most prominent political scientist writing on legitimacy, says, "I am concerned with legitimacy as a problem for social science rather than for philosophy [because] the two activities have a different purpose and a different logic."<sup>11</sup>

Unfortunately, accepting this dichotomy as axiomatic has prevented theorists from seeing the way in which descriptively defined concepts can themselves have normative significance. In the case of concepts like poverty and cultural diversity, for instance, the definition corresponds to empirically verifiable facts in the world, but those facts themselves represent normatively important features of the political landscape.<sup>12</sup> No one would claim that just because cultural diversity is empirically defined and measured it can't have normative significance. And yet, when we insist on entirely separating normative and descriptive legitimacy, we rule out this theoretical possibility from the outset. Philosophers, for their part, tend to subsume the descriptive enterprise under the normative one.<sup>13</sup> On the other side, social scientists incorporate the analysis of norms into their overarching descriptive enterprise, carefully stopping short of normative claims.<sup>14</sup> Due to these disciplinary differences,

theorists often talk past one another.<sup>15</sup> Within the context of this chapter, I am not interested in arguing that any of today's disciplinary approaches are wrong, or even that the divide between them is wrong. Rather, I am interested in what might be missed by simply accepting this fragmentation of the inquiry. My account of legitimacy combines elements from all three approaches I have mentioned, and I hope to show that it is fruitful to bridge these divisions.

It matters very much what we take to be the starting point of the inquiry, but it is difficult to define the subject matter of political legitimacy while bearing in mind these divergent methodologies. In my opinion, the typical starting points in normative theorizing about legitimacy—namely, authority, power, and coercion—are inadequate. Both power and authority are necessary for thinking about political legitimacy, in my view, but neither is adequate on its own. On the one hand, taking authority by itself as the starting point neglects those aspects of political power that don't operate as law. For instance, Raz's distinction between *de facto* authority and legitimate authority renders the analysis entirely in terms of obedience to legal directives.<sup>16</sup> But political power goes far beyond obedience to the law. Even when we aren't being asked to obey, we can ask whether the state's exercise of power is legitimate, including the various actions that it takes, as well as the values that it expresses and promotes.<sup>17</sup> On the other hand, taking power by itself as the starting point obscures the distinctiveness of the political. For example, Pettit's definition of domination as subjection to an arbitrary will places the social and the political on the same plane.<sup>18</sup> Pettit and other neo-republicans consider it to be a virtue of the account that subjection to the will of one's husband or employer is analogous to the loss of freedom under a tyrannical state. But this unification of all subordination relations makes it difficult to see what is distinctively bad about an illegitimate political order.

One might think that an easy starting point is to define legitimacy as the right to rule, but this doesn't work insofar as the terms "right" and "rule" remain as opaque as legitimacy. Often the right to rule is glossed as a demand for the justification of coercive enforcement in conditions of reasonable disagreement about justice. But this construal assumes that what matters most is reciprocal justification, which unduly favors a contractualist approach

to justifying coercion. Less obvious but more important is the fact that such an approach presumes that there is a distinction between licit and illicit violence that precedes particular social and political circumstances.<sup>19</sup> So long as this presumption goes undefended, it simply restates the questions we hoped to answer with a theory of political legitimacy.<sup>20</sup> In fact, I don't think coercion is necessary to trigger questions of political legitimacy, though power and authority are normally involved. Therefore, I will assume that when we ask about political legitimacy, we are seeking to evaluate the relations of power and authority that are expressed and exercised in a political order (at this point, I deliberately leave the mode of evaluation unspecified). The term "political order" is meant to apply to a broad array of forms of political organization, including societies governed by customary law, all of which I will refer to as regimes.<sup>21</sup> In light of this very broad definition of the subject matter, I want to propose a new way of thinking about political legitimacy, one that makes space for legitimacy to have distinctive meaning and value.

### *The Plan*

The discussion begins with an outline of my view, as set forth in the next section, "Political Legitimacy as 'Quality Assent.'" My proposal is that a regime is legitimate insofar as it achieves *quality assent* to being ruled among its subjects. Quality assent to rule, on my account, involves the willing acceptance of one's status as a subject, based on an acknowledgment that one's regime is valuable as a political order. This judgment, in turn, relies on the essential claim of a political order, which is to deliver benefits to subjects through the exercise of power and authority. Next, in the section titled "Significance of Political Legitimacy," I argue that legitimacy, as I have defined it, represents something of moral significance. Far from being merely descriptive, achieving quality assent realizes a moral ideal of voluntary subjection to rule. This ideal is realized when social order is achieved on the basis of a shared perspective regarding the values that justify the exercise of power and authority, thereby securing political stability without widespread alienation. I argue that the connection with a moral ideal of voluntary rule shows why political legitimacy is valuable, though its value is dependent on certain conditions. In the final section,

“Comparative Advantages,” I dispel some apparent objections and highlight the advantages of understanding legitimacy this way. Not only does my account of legitimacy give us a mode of evaluation that is distinct from liberal democratic morality, it also shows us why legitimacy ought to be promoted for its own sake.

#### POLITICAL LEGITIMACY AS “QUALITY ASSENT”

To introduce my view, I begin by considering the revolutionary, someone who completely rejects their current political order and seeks to radically change it. I would describe this person as an unwilling subject, someone who disavows being ruled to such a degree that they are willing to engage in disruptive and costly resistance (if it stands a chance of being effective) in order to fundamentally change the constitutional order. The contrary case is someone who is willing to remain a subject of their political order, all things considered.

To get some purchase on this idea of a willing subject, I propose a notion of assent to being ruled. This assent is present when (i) a subject forms an overall subjective assessment of governance, and (ii) on that basis, accepts her political order. These assessments can be based on a variety of views about the fundamental aims of a political order. The judgments that are involved rely on subjective valuations of apparent goods that have been achieved by the regime, at either the individual or collective level. A positive governance assessment, therefore, is the judgment by a particular subject of some success in delivering goods through rule.

Subjects may properly regard their regime as beneficial in a variety of different ways, according to their views on the nature and purpose of government. Thus, the generic notion of a governance assessment allows for idiosyncratic judgments by individuals about the goods government *ought* to serve. All that is required is that a subject takes her political order to be valuable *as a political order*. This requirement, in turn, presupposes that there is a formal, generic way of making sense of political orders as valuable. Accordingly, I suggest that regimes tacitly claim something for themselves, and it is in light of that claim that we make sense of them. Namely, they claim to exercise power and authority in order to provide some goods that are connected to the interests and

aims of those it directs. No doubt the claim is implicit and subject to a wide variety of interpretations by those making and hearing it. The regimes may not succeed at what they claim, or even try very hard, but they make this kind of claim in virtue of ruling. Insofar as a system of organized power presents itself as a system of rule, it claims to benefit subjects through the exercise of power. This claim corresponds to the *raison d'être*, its overarching justifying aim, so I call it the essential claim of rule.<sup>22</sup>

Assent to being ruled is not just a matter of judgment. It also involves a voluntary element of endorsement, i.e., “I willingly accept my subjection.” As I understand this acceptance, it requires that I judge that my subjection has a point to it, a point that corresponds to some values that I can recognize, affirm, or endorse. It is not a judgment that submission is good for its own sake, but rather, that submission is worthwhile in light of some further goods. In other words, my acceptance is grounded in the following judgment: I am willing to continue being a subject of this particular political order *because* it provides some goods, or advances some values, through ruling. I may not affirm every aspect of my political order or be fully reconciled to it, but on some level, I accept its validity. I acknowledge and accept, even if it is only minimally, my own political subjection.

This acceptance cannot simply be equated with obedient behavior, as some non-accepting subjects may comply with the law, and some disobedient subjects may willingly accept their status as a subject. But normally, the disposition to comply and readily cooperate with exercises of power and authority is a good indicator of this acceptance. As Beetham notes, “[The] degree of legitimacy is to be assessed by the extent to which those subject to it acknowledge it as rightful. And this can in principle be empirically ascertained through attitudinal and behavioral indicators which are available in the public domain, although the precise choice, design, and weighting of these is always open to disagreement and improvement in practice.”<sup>23</sup> Hence, behavior can be taken as an imperfect indicator of acceptance.

### *Quality Assent*

Having now defined this notion of “assent to being ruled,” here is my proposal, in unrefined form: A political order is legitimate

insofar as its subjects willingly assent to being ruled. Now comes the refinement: Not all assent to rule contributes to legitimacy. Some of it is disqualified, because it obviously clashes with the essential claim of rule. What does it mean to clash obviously? Though the essential claim is capacious, i.e., designed to include all the goods that regimes may claim to provide, there is one that is undeniable: the provision of basic security for all subjects. This is because the provision of basic security—understood as the protection from violence—is presupposed by any other claim that a political order could possibly make about the goods it exists in order to provide.<sup>24</sup> Though regimes may fail to, or not even attempt to, actually provide for all subjects' basic security, they nevertheless make this minimal claim as a presupposition of their essential claim. Hence, I call this claim the minimal claim of government (MCG). Consequently, the assessment by subjects of the regime as a system of rule must tacitly acknowledge that it claims, at the very least, to provide basic security. If a subject's assessment of a regime is based on a denial of this minimal claim, then it clashes with the essential claim so obviously that it would no longer be recognition of a political order as a political order.

To make things more precise, let's presume that the judgment that underlies quality assent has this abstract form: "I see value in being under this system of rule [while tacitly acknowledging this system as such a thing that aims to at least provide basic security for all subjects]." The corresponding assent is then disqualified if the judgment that a political order is valuable lacks that tacit acknowledgment, either implicitly or explicitly. It would lack it explicitly if the basis of a subject's assent is that the regime does not aim to protect the basic security of all subjects. This subject might be a *dominator*, someone who believes that the regime should neglect others' basic security—or worse, values the regime precisely because it does so. Or, this subject might be an *underling*, someone who believes that they themselves are not worthy of protection. Both of these examples are ways of assenting to rule while explicitly denying the minimal claim. But it is also possible for the assent to implicitly lack an acknowledgment of the minimal claim. It would lack it implicitly if the subject's assent is robustly independent of available evidence about whether it provides for some subjects' security. For, a robust insensitivity indicates that one considers these facts to be irrelevant to one's acceptance of a political order.

Thus, I identify the following as a “quality filter”: Quality assent is assent to rule that is based on governance assessments that do not obviously clash, either implicitly or explicitly, with the minimal claim of government. The quality filter is crafted to exclude those whose acceptance of a political order is based, directly or indirectly, on the judgment that some subjects are to be denied basic security. The assent in those cases would not be quality assent because it would not count as recognizing a political order as a political order. It is possible to define the quality filter in a way that is more substantive, raising the bar on what would count as quality assent to a higher standard. As I explain later, I set a low bar in order to avoid embedding liberal assumptions, but the abstract idea of quality assent is compatible with imposing a quality filter that is more epistemically or morally demanding.

All assent to rule that satisfies the quality filter contributes to legitimacy, in my view. Someone might then ask, when assent to being ruled is based on fear, is it included in quality assent? That depends. When the fear arises from believing that your regime would harm you if you didn’t acquiesce, then it would disqualify the assent since this judgment conflicts with MCG. But acquiescence in order to avoid an external threat does not clash with the MCG (assuming it is freely given). So the presence of fear and intimidation sometimes disqualifies the assent, but not always. This feature enables the view to explain why regimes that rule on the basis of terror, such as a tyranny or some kinds of mafia, cannot attain legitimacy even when the acquiescence to those regimes is voluntary.

Thus, my refined proposal is that a political order is legitimate insofar as it attains *quality assent* to being ruled among its subjects. Legitimacy is achieved, then, when a political order governs *in such a way* as to be widely regarded as valuable by its subjects. The upshot is that subjects have a special standing, or kind of authority, to select their own terms when assessing their government, but not if those terms obviously conflict with the essential claim of a political order.

### *The Political Subject*

On my view, legitimacy rests on the assent of all and only the subjects. Who counts as a subject? I doubt this question can be definitively settled, but it will help to indicate roughly what I mean. For

one thing, being the subject of a regime is different from being under the power of a regime. For example, the US government exercises power over the inhabitants of Mexico, but it does not rule the inhabitants of Mexico. This implies that “having power over” is not sufficient for subject status. On the other hand, subject status is not exhausted by a mere claim of authority, because an established pattern of obedience is also required. On my view, subjection to rule occurs whenever *de facto* authority or power is exercised effectively over a group of individuals, combined with a claim to benefit them through that exercise. This conjunction is able to demarcate being a subject of a political order from other relations, such as subjection of conquered or enslaved peoples.

Roughly speaking, in order for an individual S to be a subject of regime P, there must be some degree of acknowledgment on both sides. That is, subject S considers himself to be (is disposed to believe and behave as though he is) under the *de facto* authority of regime P. For its part, regime P considers individual S to be under their *de facto* authority. This means there is some minimal recognition of S’s standing within the legal system of Regime P (including recognition through customary law). Individual S is acknowledged as a person who is entitled to make complaints to the officials regarding his or her basic security. These avenues of protection and redress must be more than mere formalities; they must be moderately effective for the regime to count as acknowledging their legal standing. Otherwise, a failure to provide basic security would not be a failure of a publicly acknowledged aim.

These conditions for subjecthood must remain somewhat vague, because a determination of which individuals count as subjects is based on an array of facts having to do with the patterns of obedience in a group, and subjects’ views and expectations of their fellow subjects. So the basis for determination is a highly diffuse set of social facts, something that is difficult for just one person to manipulate. Normally the magistrates of the regime are not able to unilaterally decide who its subjects are, lest they seek to secure legitimacy by intentional exclusion, but they nevertheless have a great deal of influence over who counts as a subject.<sup>25</sup> While the boundaries of becoming or ceasing to be a subject are not always clear, nevertheless we can identify and distinguish the endpoints of the process for individuals in transition, in both directions. We

can say that there was a time when individuals have come to count as subjects, and a time when they have ceased to count as subjects, and this intuitive distinction is sufficient for my purposes.

*Hobbesian Security and Weberian Acceptance*

Thus far I have outlined a view of political legitimacy in terms of the quality assent to being ruled on the part of subjects. I used the essential claim of rule to identify what counts as non-quality assent, thereby creating a “quality filter.” Quality assent includes all those who recognize a political order as valuable, as long as their judgment does not obviously clash with the essential claim of rule. In contrast, non-quality assent includes those whose acceptance of a political order is based, even implicitly, on the judgment that some subjects are to be denied minimal security. Therefore, the account of political legitimacy that I am proposing has affinities with Hobbes and Weber, and so I want to clarify how I am combining elements of those theories.

Solving the problem of Hobbesian order is clearly an ingredient in political legitimacy, because legitimacy is not possible while there is open conflict and threat of violence—something has gone terribly wrong if civil war breaks out.<sup>26</sup> While some measure of peaceful order is necessary for legitimacy, it is not right to think of it merely as a “precondition,” as this implies that it is prior to and separate from the essential aims of political order. But this is not plausible. Whatever the story is about why political order is valuable in the first place, the avoidance of civil war is part of that story, simply because stable peace and order are required for any other valuable aim of politics to even make sense. Thus, I tip my hat to Hobbes for insisting that peaceful order is a proper aim of political order, not merely a precondition.

At the same time, I tip my hat to Weber, who argued that legitimacy arises from the inculcation of beliefs held by a group about the valid sources of authority.<sup>27</sup> The emphasis on acceptance of a system of command, where this acceptance is sustained by a belief about valid authority, is vital for my view. It connects with two deliberate choices I have made in theorizing about legitimacy. I treat legitimacy as a system-level property that pertains to the whole political order, as opposed to a property that can vary by

individual subject. I think legitimacy comes in degrees—that is to say, it is scalar rather than binary. Second, I have chosen to use the term assent, rather than consent, to avoid giving the impression that my view of legitimacy involves the authorization of a regime by its subjects, such that authority arises through a deliberate contractual arrangement.<sup>28</sup> As I have developed the idea, *quality assent* stands for a combination of a volitional state (acceptance) and a belief state (judgment). A decent proxy for this combination of willing and believing is a set of behavioral dispositions—to obey, first and foremost, but also to evince general support for the order upheld by the regime. Overall, quality assent is an acknowledgment of a regime as to-be-obeyed *because* it is worth obeying, where this is normally backed up by corresponding actions and dispositions. Accordingly, the view owes as much to Weber as to Hobbes.

#### SIGNIFICANCE OF POLITICAL LEGITIMACY

Now, someone might ask: If we achieve this thing that I call legitimacy, what exactly have we achieved, and how important is it that we have achieved it? In this section I will show why political legitimacy, understood as quality assent, has distinctive value and ought to be promoted for its own sake.<sup>29</sup>

It is essential to my account of political legitimacy that quality assent has dependent value, but the nature of this dependence requires some elaboration. The basic idea is that attaining legitimacy in a particular political order is valuable only when the political order is valuable. In this sense, the value of legitimacy is contingent on particular political circumstances, because any given political order may fail to be valuable. However, this contingency by itself does not show that legitimacy isn't extremely important in the pantheon of human values. In fact, many goods that we aim to realize have only conditional value. For example, equality is not valuable if we are all equal slaves. Solidarity is not valuable if it is based on hatred. In spite of there being conditions, there are still some important things we can say about why equality and solidarity are valuable. So, too, with legitimacy.

Besides this simple conditionality, there is a deeper kind of dependency at play. The value of legitimacy depends in part on the significance of the item whose legitimacy is in question. When a political

order is delivering the important human good of basic security, and when subjects recognize it, the recognition is itself valuable. Though the recognitional value is distinct, it is nevertheless tied to the value of what is being recognized. Thus, it makes sense to say that insofar as we value a political order, we should value that it be legitimate. This idea should be contrasted with the notion that quality assent is valuable *because* it enables the effective functioning of government. That may well be true, but it wouldn't exhaust the value of quality assent, in my view, because the value of quality assent is not entirely derived from what is assented to. Rather, quality assent has some non-derivative, non-instrumental value. In this sense, it is like loyalty to one's friends or commitment to a cause. The value of loyalty or commitment depends in certain ways on its intentional object, without being entirely reducible to the value of the object.

These considerations lead me to claim that quality assent has "dependent, non-instrumental value."<sup>30</sup> This terminology may sound abstract, but I am drawing on an idea that is simple and intuitive. Consider the mundane context of a patient interacting with his physician.<sup>31</sup> The doctor makes an implicit claim, in virtue of her role, to instruct the patient on the basis of expertise about his health. If the doctor is minimally successful in fulfilling this claim, i.e., she has considerable medical knowledge and the ability to apply it through directives, then there is value in the patient acknowledging that the implicit claim is fulfilled and then relating to the doctor accordingly. In other words, when the doctor's authority over the patient has some value, then the recognition and corresponding acceptance of that authority, by the subordinate, has further value.

Likewise, consider the case of a judge deciding a civil dispute between two parties. The judge makes an implicit claim, in virtue of her role, to resolve the dispute in a fair and impartial way. If the judge is minimally successful in fulfilling this claim, then there is value in the disputants acknowledging that the implicit claim is fulfilled. This corresponds to the ancient dictum: Justice must be done, and it must be seen to be done. The disputants accept the verdict under the rubric of "justice having been done." The dictum implies that the value of seeing that justice has been done is not reducible to the value of justice. Although, it is not entirely independent of justice.

Quality assent to one's political order is like these examples. Its value is dependent, but not wholly derivative or instrumental. It rests on a recognition whose value is not reducible to the political order, but neither is it completely independent of it. The upshot is that when the political order is minimally valuable for subjects as political order, then quality assent to it has non-instrumental value. In particular, I argue that its value corresponds to three interrelated goods: avoiding political alienation, establishing political stability on a durable basis, and fostering alignment on the values that justify the exercise of political power.

### *Alienation and Stability*

The value of quality assent should first be observed at the individual level. Quality assent represents the attainment of something objectively valuable: the avoidance of alienation from one's own political order. This alienation arises because one cannot authentically affirm the regime to which one is subject as in any sense worthwhile, i.e., as providing at least some benefits that one values subjectively. This sort of alienation is objectively bad for the individual. Consider again the rebel or the revolutionary, whose alienation is extreme. Even if they find solidarity or community in other arenas, they disavow the supreme ruling organization in their territory, the one with final say. Thus, when they reject their political order, it is a pro tanto bad state of affairs, as well as being bad for them. I'm relying on an intuitive contrast between willing and unwilling subjection in order to mark out a morally significant ideal of voluntary rule. I claim that each person has a fundamental interest in attaining voluntary rule for themselves, no matter what other benefits the political order may be delivering. Hence, I call my view of political legitimacy the voluntary rule conception.<sup>32</sup>

Another reason quality assent is valuable is that it secures political stability. Philosophers have been too quick to dismiss the significance of stability as an end in itself.<sup>33</sup> While it is true that stability may be valuable only when certain conditions are met, it cannot be inferred that its value is only instrumental. Stability is integrally related to securing justice and the common welfare. The easiest way to see this is to imagine circumstances with a high degree of political instability, thereby presenting an unpredictable threat

of disorder, disruption, and violence. This sort of civil unrest can reduce well-being directly when it occurs, and indirectly whenever it looms as a threat. Thus, political stability is an integral component of the social conditions that, taken altogether, count as realizing the goods of political association, including peace and justice.

Quality assent makes a quantitative and qualitative difference to stability. For one thing, it delivers stability on a more reliable and durable basis. Weber himself declares that quality assent (what he calls “legitimate domination”) produces the most stable rule, while “purely material interests and calculations of advantages . . . result . . . in a relatively unstable situation.”<sup>34</sup> David Beetham draws on the Weberian idea a century later to emphasize the connection between legitimacy and avoiding violence. He says, “[An understanding of legitimacy] helps explain the erosion of power relations, and those dramatic breaches of social and political order that occur as riots, revolts, and revolutions . . . it is only when legitimacy is absent that we can fully appreciate its significance where it is present, and where it is so often taken for granted.”<sup>35</sup> The social psychologist Tom Tyler, having defined legitimacy as “a belief about the moral right of [authorities] to possess and exercise power and influence,” thinks that legitimacy helps stabilize the criminal justice system.<sup>36</sup> Tyler argues that when a belief in the moral right of authorities is present among subjects, the use of coercion and force (including punishment) will be accepted as valid. Subjects will consider the system’s rules and norms to be valid and appropriate, thereby motivating them to self-regulate and cooperate with law enforcement.<sup>37</sup> It even appears that in some contexts, young men become less likely to pursue a life of crime.<sup>38</sup> These findings suggest that, when subjects accept their ruling order as valid, regulation of behavior can be achieved with correspondingly less coercion and intimidation.

Quality assent also makes a qualitative difference to political stability. Edmund Burke speaks of a society in which the political order has so much popular allegiance that it makes “power gentle and obedience liberal.”<sup>39</sup> For Burke, this “mixed system of opinion and sentiment” delivers political stability of a more admirable sort than can be had through brute force alone. The pro-social behavior is maintained not through fear or even blind habit, but through sentimental allegiance to the social order that is being

preserved by the regime. This allows subjects to view their regime from a perspective that is oriented toward values—as a social scientist recently put it, it allows citizens to “relate to the powerful in moral rather than self-interested terms.”<sup>40</sup> Generally speaking, it is better that obedience be cheerful and generous rather than grudging and mistrustful. In other words, if there must be power, it is better that it be gentle rather than brutal. Thus, stability based on quality assent can help to peacefully preserve the political and constitutional culture.

### *Political Alignment*

When political stability has been secured through widespread and sustained quality assent to rule among subjects, it represents rough convergence on the values that justify the fundamental norms constraining the exercise of power. I call this *political alignment* on the proper use of political authority and power, and it is significant for several reasons. Quality assent to rule requires that there be some value system through which the regime’s use of power and authority makes sense to the individual. It indicates at least some alignment between what an individual values and what goods are promoted by the political order to which he is subject (though it may also promote other goods, ones valued by other subjects). When this assent is widespread, it represents some degree of alignment between what is proposed by a regime and what is accepted by subjects about the aims and functions of the political order. When there is a congruence between a regime’s exercise of power and the attitudes of those subject to that power, then there is likely to be some nexus of values that most subjects can endorse as justifying the use of political power, which usually involves claims of authority and threats of violence.

When this nexus is stable, the political order is supported by a shared sense that the value system(s) served by the ruling organization are worthwhile. Even if the coherence of values is incomplete, the rough alignment shows that the ends and aims of government are the object of broad support. In other words, there is a kind of shared perspective on the values that justify exercising power and authority in the name of the whole community. This allows subjects to sustain an attachment and allegiance to the fundamental

norms related to the exercise of power, even if they disapprove of particular policies or laws. This, in turn, exerts a form of pressure on the government to keep its exercise of power aligned with the value system(s) endorsed by subjects, which in turn keeps tyranny in check.

Because there is willing deference to the guiding norms of the community, this alignment brings an otherwise compulsory form of organization closer to a voluntary association.<sup>41</sup> While the alignment improves the vertical relationship between rulers and ruled, it also improves the horizontal social relations among subjects. It is good for me if I am subject to a system of political subjection in which my fellow citizens are willing subjects as well. Conversely, the clear absence of voluntary rule—involuntary subjection—instantiates a kind of disvalue, for an individual and for a political community. Therefore, political alignment allows a citizen's vertical and horizontal relations to approximate more closely the moral ideal of a voluntary association—a moral ideal that animates many approaches to democracy and liberalism, as it happens.

Thus, the significance of political alignment can be seen from the first-person perspective of a subject as well as the third-person perspective of an outsider viewing a political order. Sustaining a political order on the basis of this sort of alignment represents a morally significant achievement for individuals as well as groups.<sup>42</sup> When it exists, we ought to promote its conservation. Where it doesn't exist, we ought to foster and cultivate it. This means that legitimacy is the sort of value that should be promoted by political orders, taking its rightful place alongside other goods that we promote, like justice, liberty, and welfare.

### *Accepting for the Right Reasons*

Philosophers who think about endorsement of hierarchy often have the following thought: Either there is value in accepting authority relations when it is for the right reasons, or, the way to understand the value of the acceptance is in instrumental terms, e.g., it leads to cheaper compliance, more utility, and so on. But those are not the only options, in my view. In cases where one party is directing another, it is valuable that the director relate to the directed party on terms that inspire acceptance of their power

and authority. This is true even when the subordinate party doesn't have a full grasp of the reasons behind it, and so cannot be accepting it "for the right reasons" in that sense. Hence, there is a kind of value that is not reducible to the downstream consequences, but which doesn't require the beliefs that produce the acceptance to be entirely true or perfectly correct.

Still, someone may insist that there is simply no value in the acceptance if the judgment on which it is based is incorrect. There is a sense in which my view accepts that critique, but another sense in which it doesn't. For one thing, notice that the notion of correct acceptance is ambiguous. When we say, "Sonia's acceptance of her physical therapist's right to be in charge of her rehabilitation is correct," this could mean two different things. It could mean that it is correct for Sonia to accept it, or it could mean that the beliefs on the basis of which Sonia accepts it are correct. To see how these can come apart, imagine that Sonia has a capable physical therapist who instructs her to carry out a therapy routine that is effective but tremendously painful. Imagine that the routine is so painful that Sonia does not believe it is good for her, but she is charmed, cajoled, or coaxed by the therapist into going along with it—say, for instance, that the therapist is particularly charismatic and has a commanding presence. Her acceptance of his authority can be correct, even if her acceptance is not grounded in correct beliefs about the therapist's authority or her reasons for obeying. Willingly subjecting herself to his direction is valuable for Sonia, and thus correct in a sense, even when it isn't based on believing in his medical expertise (though the correctness of the acceptance is conditional on his having medical expertise).<sup>43</sup> Only in this sense does the value of acceptance *depend* on correctness.<sup>44</sup>

Still, someone might be tempted to ratchet up the epistemic conditions in order to guard against cases of false consciousness. They might identify two salient defects in the beliefs underlying quality assent, both of which might seem to threaten to cancel out the value of the acceptance. One is where the content of the beliefs is false; the other is where the process of belief formation involved manipulation or deception. While it is tempting to add these as conditions on the value of quality assent, that would be a mistake. Both of these defects *might* turn out to make the acceptance incorrect and thereby lacking in value, but neither *necessarily* makes that

the case. If they did necessarily—that is, if these defects were taken to always cancel out the value of acceptance—then you would be excluding some cases where the acceptance would be correct and valuable, in the sense illustrated above. Acceptance can be valuable even when it doesn't emerge from a faultless apprehension of the relevant facts or have immaculate epistemic credentials. To insist otherwise is to prize having correct beliefs at the expense of everything else that might matter.

### *Legitimacy without Justice*

Likewise, my view deliberately holds open the possibility that there may be quality assent to rule even when the regime is not fully just or rights-respecting. This returns us to the question of what conditions must be met in order for quality assent to be valuable, an issue that I postponed while I elaborated the value in terms of voluntary rule. Consider a mundane analogy again, that of a teacher and a student in the classroom. The teacher makes an implicit claim to educate the student. If the teacher is minimally successful in fulfilling this claim, then there is value in the student acknowledging that the implicit claim is fulfilled and accepting the teacher's supervision over them. To insert myself into the scenario: Provided that my teaching is minimally valuable as teaching, it is a further good that my students recognize that I have some expertise and authority. I may not have exactly the authority that they think that I have, but it is still valuable that they recognize me as having some kind of authority and accept me as their teacher on that basis. Students who are entirely new to philosophy can only have a faint idea of what grounds my authority to teach, necessarily.<sup>45</sup> No doubt there is some level of incompetent, malevolent, or harmful teaching that would cancel out the value of the teaching. But above this threshold, the teaching has value, and so the assent to the teaching has value too. The same holds for doctors and patients, and parents and their children.

Someone who is inclined to deny that quality assent has value in these contexts may just be disagreeing about the conditions under which it is valuable. For if I were to increase the threshold sufficiently high, I suspect that this person would accept that the absence of quality assent represents a distinct loss of value. If so,

this person should accept that, like the teacher and doctor, there is value in a particular regime garnering quality assent, as long as the regime is above some threshold of value. Failing to provide for basic security, in my view, is what places it below this threshold, because the regime would fail to fulfill the minimal claim of a political order, thereby losing its claim to be at all valuable.

Nevertheless, there are some who would be willing to accept the dependent value of legitimacy but insist that the threshold should be much higher, e.g., attaining justice. But it is too demanding to say that the value of legitimacy depends on whether justice has been achieved. An analogy would be to maintain that it is only good for a person to love someone who is always honest with them. It is probably *better* for someone to love an honest person, but that doesn't mean it can't be good for them to love someone who bends the truth. In other words, normally a life without love is worse than one with love, even in the absence of perfect honesty. It is difficult to uphold such a demanding view about the *value* of love without making its realization unattainable. As honesty and love are two distinct values in a human life, so justice and legitimacy are two distinct values in a political community. Legitimacy is worth preserving even without a full measure of justice, just as it is worth preserving love even when there has been a lapse in honesty. As I mentioned above, political ideals such as equality, democracy, and solidarity all work this way. For instance, while the ideal of equality does not have unconditional moral value, it is something to be aimed at and preserved, even while we pursue other ends at the same time. In a similar way, I would say that legitimacy has non-instrumental though conditional value. It is important enough to be its own aim, an end pursued by rulers and subjects alike, not merely as a means to justice.

#### COMPARATIVE ADVANTAGES

What are the advantages of this account when compared to other accounts of political legitimacy? In order to identify the comparative advantages, it will be helpful to revisit and clarify the distinctive features of my account. First, my account treats legitimacy as a system-level property, as opposed to saying that the very same regime is legitimate for one of its subjects but not for another.<sup>46</sup>

Reflection on the role that legitimacy judgments play in our actual political deliberation shows us that there are certain advantages that come with treating legitimacy as a system-level property. For example, if a decision to support rebels in a civil war depends on whether the current regime is legitimate, then we are interested in a property of the regime, not a property that varies according to each individual subject.<sup>47</sup> Another way of taking a system-level approach is to introduce a singular hypothetical perspective, but this imputation of unanimity erases important facts about the differing levels of quality assent across the population. My account, on the other hand, incorporates this individual variation, thereby avoiding the pressure to collectivize while retaining the system-level feature.<sup>48</sup>

This brings me to the second feature that I want to highlight. My account is summative, in the sense that it treats the system-level legitimacy of a regime as an aggregative function of the individual assessments of governance by each subject. No individual's quality assent is necessary for the regime to be legitimate, but each person's quality assent factors into the overall determination of legitimacy. The assent and non-assent of each subject are aggregated on an equal basis in order to reflect the moral ideal of voluntary subjection to rule, and its fundamental importance for each subject. The summation allows for the existence of quality assent to be a matter of contingent interests and values at the level of the individual. This approach to legitimacy judgments isn't purely relativist because, for any given regime at a given time, there is an objective fact of the matter what degree of quality assent has been achieved. Nevertheless, the view retains a sensitivity to historical context, since quality assent depends on the actual beliefs of the regime's subjects. Treating each person's assent as relevant but not decisive for legitimacy allows my view to better address a tension that troubles other accounts, namely, the tension between the group and the individual.

Do the views of outsiders count in the summation? This point relates to a distinction that is typically drawn between internal and external legitimacy. Sometimes the recognition of outsiders, such as the "international community," matters for the effective functioning of a regime. However, the lack of internal recognition seems to be a greater threat to a regime's legitimacy than

lacking external recognition.<sup>49</sup> This suggests, correctly in my view, that the two audiences are not on a par. I relate this observation to the essential claim of rule, because if you were to assume that the international community didn't exist, then it would still be possible to make sense of a political order as benefiting its subjects. But the same is not true if you were to assume that subjects didn't exist. Thus, I am inclined to say that internal legitimacy is paradigmatic of the concept, and what we call external legitimacy matters only indirectly.<sup>50</sup>

The third feature of my approach that I want to highlight is that legitimacy is a matter of degree. Given that I understand legitimacy in scalar terms, one might worry that we lack the ability to simply call a particular regime illegitimate. But this is too quick. We can judge that a piece of fruit is unripe, even though we recognize that ripeness comes in degrees. In a similar way, a scalar concept of legitimacy need not preclude simple attributions of illegitimacy. I suspect, however, that any remaining unease about treating legitimacy as a scalar concept reflects a deeper worry. The worry is that legitimacy should properly be understood as a side constraint, such that it can't be tallied up as a quantifiable good that might, in principle, be balanced against other goods in a quantifiable way. But I think this worry is not as serious as it might first appear. Indeed, it brings to the foreground the most distinctive feature of my account. I think legitimacy should be understood as a good to be promoted, rather than a source of categorical prohibitions.<sup>51</sup> There are both theoretical and practical advantages that come with embracing this feature in our thinking about legitimacy, and I address these in the following sections.

### *Liberal Democratic Morality*

The first theoretical advantage of this feature—treating legitimacy as a good to be promoted that is distinct from other political goods—is that it clears up the role of liberal democratic morality in legitimacy assessments. There is a family of views of political legitimacy that take liberal democratic presuppositions about permissible coercion to be axiomatic; Bernard Williams has recently criticized these under the heading “political moralism.”<sup>52</sup> One difficulty with such views is that they build substantive claims about

what justifies the authority of the state into their conception of permissible coercion, such that it is conceptually impossible for wrongful state coercion to occur in a legitimate regime. But this way of conceptualizing things makes it harder to recognize the dimensions of political illegitimacy that are distinct from mere wrongful coercion. The same is true for views of legitimacy based on liberal rights. If we define political legitimacy such that the legitimate regime by definition doesn't violate its subjects' human rights, then, again, we obscure the dimensions of political legitimacy that aren't included in a mere inventory of rights.

In both cases, I suggest, moralistic accounts of legitimacy muddy the waters. Building in liberal democratic commitments as axioms is both unnecessary and unhelpful in theorizing about legitimacy: unnecessary, because it is possible to show how achieving political legitimacy is valuable without these presuppositions, and unhelpful, because building them in clouds the relationship between legitimacy and liberal democratic values. It is entirely understandable that those with substantive liberal democratic commitments would want to see respect for liberal rights and democratic requirements as being necessary conditions of political legitimacy. But it is a mistake to think that one needs to build those substantive commitments into one's notion of legitimacy in order to remain faithful to them. In certain contexts, it is natural to make assessments about the legitimacy of a regime that are, *prima facie*, orthogonal to judgments about whether and how that regime respects the requirements of liberal and democratic principles. Here an account of legitimacy like mine has an advantage, since it enables us to make sense of the kinds of assessments we are compelled to make in those contexts. And nothing essential is lost, for the liberal democrat, in adopting such a conception of legitimacy, since the only theoretical concession that this requires is that one regard one's various evaluations of a regime—as being illegitimate, illiberal, or undemocratic—as complementary, rather than coextensive, evaluations. Certainly, in practice, this shift means that the liberal democrat cannot frame his democracy or rights-based objections to illiberal regimes as if those objections are about legitimacy. But those framings would, in any case, prematurely treat it as a settled question as to whether the requirements of legitimacy are coextensive with the requirements of

liberal democracy.<sup>53</sup> My account can still explain why democracy and liberalism *contribute* to legitimacy, without building them into the concept of legitimacy.<sup>54</sup>

While it avoids the difficulties of moralism, my account is also able to avoid some serious problems with a realist theory of political legitimacy.<sup>55</sup> Unlike realists, I don't describe the value of legitimacy in terms of the peaceful maintenance of order and security. Hence, a stable and secure Hobbesian state can still be illegitimate if it fails to win subjects' quality assent. Thus, the standard of quality assent can allow that subjects are being ruled illegitimately without slipping into the implication that they are no better than slaves or internal enemies. Because the standard of quality assent can distinguish between political order and legitimate political order, it is able to explain why a stable dictatorship that rules through fear is not a legitimate political order. In general, this is an explanatory burden that is difficult for realists to discharge.

#### *Distinct Basis for Criticism*

The standard of legitimacy in my account—namely, the achievement of quality assent—serves as a ready basis for criticism. No regime would deny that it has failed in some respect if it fails to attain quality assent. If we adopt quality assent as the standard of legitimacy, then regimes that lack it would be criticized for lacking something that they themselves acknowledge as worth having, that they should have.<sup>56</sup> We can criticize them with a standard that they could not intelligibly disavow. This is not the case when we criticize a state for being illiberal or undemocratic, and so these standards provide less solid grounds for criticism. Furthermore, because the epistemic standards do not require the beliefs to be faultless, the standard is more attainable. Since it is something that can be attained, as opposed to a utopian regulative ideal, it removes a potential source of resistance to the critique.

Moreover, an appeal to liberal democratic standards for political legitimacy can appear parochial, and for good historical reasons. There are many examples of liberal democratic ideals being used to legitimize neo-imperial projects.<sup>57</sup> Unlike the aims involved in the essential claim of rule, liberal democratic aims are not ones that all political regimes need to acknowledge insofar as they claim

to rule. Thus, my account of legitimacy provides a basis for critique that is far less tainted with neo-imperialistic connotations.

Still, it might be thought that quality assent is too morally thin. For example, there are various moral considerations that aren't included explicitly. What about a state that behaves immorally, either to insiders or outsiders? These are valid concerns, but immoral treatment is under-described. In some sense of "immoral treatment," all states are guilty as charged, e.g., unjust taxation schemes, failure to pay reparations, exploitative trade deals with other nations, etc. If these behaviors compromised legitimacy, then no state would be legitimate, and the standard would simply duplicate political morality in general. Since legitimacy is sometimes used to overcome intractable differences regarding what political morality requires, it seems better to retain other moral registers for these sorts of evaluations, such as whether a state is fair, egalitarian, or fully just.<sup>58</sup> The standard of political legitimacy would have little point if it weren't distinct from other modes of evaluation.<sup>59</sup>

By keeping legitimacy distinct from other modes of evaluation, we can better see what is lost in the absence of legitimacy. As I have defined it, a lack of legitimacy is not the same thing as a lack of justice or a lack of rights. In order for political legitimacy to remain a distinct mode of evaluation that corresponds to a distinct moral defect in a state, it cannot include all the things that we hope for, such as rights, equality, and democracy. In any case, we already have standards of moral evaluation for those things. What my account of legitimacy can show, instead, is how those things can diverge from political legitimacy. For instance, a regime may make gains in terms of justice but lose legitimacy along the way (as occurred with the European Union, arguably). Thus, the fact that quality assent corresponds to something unique and distinct counts in favor of using it as a standard of legitimacy. Only when it is conceptually independent can it show us what is at stake when we face trade-offs between multiple political values.

### *Promoting Legitimacy*

The ability to treat legitimacy as a political good that is distinct from liberal democratic morality has theoretical advantages, but it

has practical ones as well. First, it enables policy-makers to aim at legitimacy as an end in itself. Since policy-makers need to be able to reckon with trade-offs, it allows them to treat the securing of legitimacy as one aim among others in a deliberation about what to do all things considered, whether it is a question of domestic health-care reform or foreign trade deals. My account of political legitimacy allows political actors to see legitimacy as a property of political orders in its own right, rather than treating legitimacy as a downstream by-product of justice.

In order to spell this out, we need to refer back to the points made in the earlier section on dependent value, about why legitimacy is valuable in a non-instrumental way. My claim was that the value of legitimacy is grounded in a combination of social goods—non-alienation, stability, and political alignment—with which the realization of legitimacy is positively correlated. These are goods that a regime has reason to realize independently of any further benefits their realization might have, e.g., with respect to justice. Inasmuch as that's the case, a regime will sometimes have reasons to act so as to promote its legitimacy, even where this conflicts with reasons derived from its other valuable aims. But equally, a regime will sometimes have reasons to prioritize its other valuable aims, even where this conflicts with its reasons to promote legitimacy. Legitimacy is one source of proper aims among others for any political regime.

Even John Locke thinks that it is a distinct shortcoming of government if it acts in such a way that it loses the support of the people. He says, “When the governors have brought it to this pass, to be generally suspected of their people, . . . [this is] the most dangerous state which they can possibly put themselves in; wherein they are the less to be pitied, because it is so easy to be avoided . . . if he really means the good of his people, and the preservation of them.”<sup>60</sup> Thus, even Locke acknowledges that something like quality assent is a proper aim of government, something they can be criticized for failing to attain even if they have acted justly.

What I am trying to capture in these remarks is the kind of *realpolitik* that vulnerable regimes routinely have to contend with, where they are simultaneously trying to realize the goods that political authority necessarily aims at realizing (e.g., related to the welfare and interests of the population), while simultaneously

trying to strengthen its own claim to being the actor that oversees the realization of these goods. Williams describes these concerns in terms of the notion of *political survival*.<sup>61</sup> If a moderate party has to choose between reducing immigration and staying in power, or increasing immigration and being replaced by a right-wing nationalist party, then my view shows that the former option—acting to maintain quality assent, while compromising other values—is not necessarily an illicit response to these challenges of governance. Those who understand legitimacy as an all-or-nothing side constraint, by contrast, can't make sense of this dilemma as one that involves genuinely conflicting ends. Instead, they can only represent the standards of legitimacy that political regimes answer to as trumping or being coextensive with any other valid demands.

### *Obligation and Rebellion*

I've been describing some of the comparative advantages of my account, compared to rival accounts of legitimacy. But one might think that my account has a decisive disadvantage compared to its rivals. In short, we often want to know what difference legitimacy makes. Does it tell us whether we have an obligation to obey the law, a duty not to rebel, or a right to intervene in sovereign states? One might think that my account doesn't give us the resources to answer these sorts of questions.

These are legitimate concerns, but they contain assumptions that I want to challenge. Suppose we think that legitimacy straightforwardly corresponds with a duty to obey. One way to capture this kind of view is simply to *define* legitimacy as whatever makes it the case that there is (domestically) a duty to obey and (internationally) a duty not to interfere. But doing so risks putting the cart before the horse. Deliberations about whether to rebel or intervene require us to *first* judge whether a regime is illegitimate. Consider an analogy. Suppose that a medical establishment advises that a patient undergo weight loss surgery if he is obese, but then simply defines "obese" as that weight above which one should undergo weight loss surgery. This would overly functionalize the definition of "obese," reducing its meaning to its role in a decision. Similarly, some theorists, e.g., Allen Buchanan, have an overly functionalized concept of legitimacy, reducing its meaning

to its function as a decision criterion.<sup>62</sup> When international lawyers have a debate about whether intervention is justified in Syria, for example, one of the questions they ask themselves is whether the Assad regime is legitimate. And they ask this question in a way that suggests that they are trying to latch onto a feature of the world that is analytically distinct from the question of what is to be done. The way that their question bears on their all-things-considered decision would make no sense if legitimacy just *meant* “such as to not be interfered with.”

On my view, judgments about legitimacy do correspond to a feature of the world that we can first investigate, and then use in deliberation. Saying that the questions are distinct doesn't mean that legitimacy is irrelevant for questions of whether to rebel or intervene. It just means that it doesn't settle those questions by itself, by definition. Legitimacy normally contributes something to the reasons we have to obey the law, but it is a factor that hangs in the balance alongside other factors, in such a way that it can either strengthen our duty to obey the law, or be outweighed by factors that count against obeying the law.<sup>63</sup> In other words, it is not merely equivalent to those questions. In fact, by not treating the verdicts on legitimacy as equivalent to verdicts on the duty to obey, we can resolve a paradox about the value of legitimacy. Mathew Coakley argues that legitimacy is the sort of thing that is capable of mattering only in those cases when it shouldn't matter.<sup>64</sup> That is to say, legitimacy could only come to matter in those cases where we lack interest- or rights-based reasons to obey the law. But in those cases, we simply lack sufficient reason to obey the law. And, he argues, in those cases we would be using the notion of legitimacy to “tip the scales” in exactly those cases where we shouldn't tip the scales. I find Coakley's argument persuasive, but what it demonstrates is not that legitimacy is normatively vacuous, but that we are wrong to seek a theory that equates legitimacy with the duty to obey. My view of legitimacy is able to avoid this paradox.

## CONCLUSION

I have elaborated and defended a new theory of political legitimacy based on *quality assent*. According to my account, a regime is legitimate insofar as its subjects exhibit quality assent to being

ruled. Assent to being ruled is a judgment-based acceptance by an individual subject that is consistent with the essential claim of rule, which is to provide benefits through the exercise of power and authority. Assent is quality assent when it is consistent with the minimal presupposition of this essential claim, i.e., that regimes provide for the basic security of their subjects. Therefore, I argued, regimes gain legitimacy by delivering benefits through ruling in such a way as to be recognized by their subjects as valuable instances of political order. This means that my view combines an emphasis on peaceful order, drawn from Hobbes, with an emphasis on subjective beliefs, drawn from Weber.

I have argued that legitimacy, understood in these terms, is morally valuable. It corresponds to an ideal of voluntary rule, wherein each subject willingly accepts their political order in light of some values that they endorse. I argued that the realization of voluntary rule corresponds to three social goods. First, it correlates with the individual good of avoiding political alienation, such as that experienced by a rebel or revolutionary. Second, it corresponds to durable political stability, where widespread obedience is sustained without resort to fear or intimidation. And third, it corresponds to political alignment, a situation in which subjects converge broadly on the norms and values that govern the exercise of power, and their allegiance to them forms a kind of collective commitment to upholding them. The realization of voluntary rule has non-instrumental, though dependent, value. The value does not require the attainment of justice, but only basic security. Furthermore, the value does not depend on the beliefs that generate the acceptance being correct. So quality assent need not have the most pristine epistemic pedigree in order to be valuable.

I have argued that when political legitimacy is understood this way, it has significant advantages over rival accounts. It avoids embedding liberal democratic morality in the concept of legitimacy, a feature that leaves other normative standards of legitimacy open to objection on grounds of being parochial or ideological. It also furnishes an undeniable basis of criticism, since no state can deny that it has failed insofar as it lacks quality assent. It also allows us to see legitimacy as an end worth promoting for its own sake, thereby showing how it could be weighed against other political goods that regimes seek to realize. I argued that allowing

for various defects in subjects' beliefs permits legitimacy to be an attainable standard, thereby strengthening its role as a basis for universal critique. Finally, I argued that it helps us resolve a paradox in normative theorizing, which is that if legitimacy were to be equated with the duty to obey or right to rebel, then it wouldn't be possible to see why it mattered.

The advantages that I've explained and summarized here arise because I regard legitimacy as something attainable, yet normatively distinct and valuable. This makes my view better at explaining the puzzle with which I began: Why do we commonly regard a lack of legitimacy as a defect that ought to be fixed and is fixable? My account takes a more everyday view of what legitimacy requires: It bases the standard for legitimacy on what is essential to and undeniable about politics. It admits that politics involves subjection, rather than seeking to re-describe it in terms of non-subjection—self-rule cannot be the aim, even in theory. At the same time, my conception better navigates the tension between the group and the individual that confronts any account of legitimacy. On my view, there is no individual demand for or right to justification of the state that, when satisfied, leads directly to legitimacy. Rather, the claim is that it is good for individuals to be willing subjects, and it is bad for them to be unwilling subjects. This ideal of voluntary rule, therefore, allows us to see that political legitimacy is a good to be promoted—alongside justice, but distinct from it.

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## NOTES

1. For a discussion of the difficulty of defining political legitimacy, see section 1 of Fabienne Peter, "Political Legitimacy," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2016 (Metaphysics Research Lab, Stanford University, 2016), <https://plato.stanford.edu>.

2. On political obligation, see A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2000); Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society* (Oxford: Oxford University Press, 2006); George Klosko, *Political Obligations* (Oxford: Oxford University Press, 2005). On legitimate authority, see Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986); Joseph Raz, "The Problem of Authority: Revisiting the Service Conception," *Minnesota Law Review* 90 (2006): 1003–1044; Leslie Green, *The Authority of the State* (Oxford: Clarendon Press, 1990); Stephen Perry, "Political Authority and Political Obligation," *Oxford Studies in Philosophy of Law* 2 (2013): 1–74; John Tasioulas, "The Legitimacy of International Law," in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), 97–116.

3. See Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity: Normative Analysis of the State*, ed. Alan P. Hamlin and Philip H. Pettit (Oxford: Basil Blackwell, 1989), 17–34; John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Belknap Press of Harvard University Press, 2001); David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2007); Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2008).

4. For an argument that human rights are a necessary condition for legitimacy, see Allen Buchanan, *The Heart of Human Rights* (New York: Oxford University Press, 2013). For an argument that republican non-domination is necessary for legitimacy, see Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012).

5. One exception may be the revival of political realism, though their allegiance to the method of critical theory hampers the construction of a full-blown theory of legitimacy. Raymond Geuss, *The Idea of a Critical Theory: Habermas and the Frankfurt School* (Cambridge: Cambridge University Press, 1982); Raymond Geuss, *Philosophy and Real Politics* (Princeton, NJ: Princeton University Press, 2008); Bernard Williams, *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, ed. Geoffrey Hawthorn (Princeton, NJ: Princeton University Press, 2005); Enzo Rossi and Matt

Sleat, "Realism in Normative Political Theory," *Philosophy Compass* 9, no. 10 (October 2014): 689–701. For an analysis of the limitations of a realist theory of political legitimacy, see Amanda R. Greene, "The Promise of Political Realism" (Rochester, NY, 2018), <https://papers.ssrn.com>.

6. Awareness of this gap has been growing. For instance, Jane Mansbridge argues that we need an account that specifies the sufficient conditions, because we lack the levels of legitimate coercion that are needed to solve major global problems like climate change. Jane Mansbridge et al., "Listening to One's Constituents? Now, There's an Idea" (Brian Barry Memorial Lecture, London School of Economics and Political Science, May 15, 2017), <http://www.lse.ac.uk/>.

7. Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Berkeley: University of California Press, 1978); David Beetham, *The Legitimation of Power* (Atlantic Highlands, NJ: Humanities Press International, 1991); Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006).

8. John Rawls, *Political Liberalism*, with a New Introduction and the "Reply to Habermas" (New York: Columbia University Press, 1996); Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996).

9. H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961); Raz, *The Morality of Freedom*.

10. Those who work on normative legitimacy need not exclude its descriptive sense from their theory, but in practice they usually do. For endorsements of the strict distinction, see among others Allen Buchanan and Robert O Keohane, "The Legitimacy of Global Governance Institutions," *Ethics & International Affairs* 20, no. 4 (December 2006): 405–437; Estlund, *Democratic Authority*; David Copp, "The Idea of a Legitimate State," *Philosophy & Public Affairs* 28, no. 1 (1999): 3–45; Rawls, *Justice as Fairness*; Tamsin Shaw, "Max Weber on Democracy: Can the People Have Political Power in Modern States?," *Constellations* 15, no. 1 (2008): 33–45; Fabienne Peter, *Democratic Legitimacy* (New York: Routledge, 2009). Legal theorists reproduce the divide within the discipline by distinguishing between analytic and normative jurisprudence, though this distinction is contested in H.L.A. Hart, "Positivism and the Separation of Law and Morals," *Harvard Law Review* 71, no. 4 (1958): 593–629; Ronald Dworkin, *Law's Empire* (Cambridge, MA: Belknap Press, 1986).

11. Beetham, *The Legitimation of Power*, 7.

12. Sabina Alkire and James Foster, "Counting and Multidimensional Poverty Measurement," *Journal of Public Economics* 95, no. 7 (August 2011): 476–487; James D. Fearon, "Ethnic and Cultural Diversity by Country," *Journal of Economic Growth* 8, no. 2 (June 2003): 195–222.

13. Peter, *Democratic Legitimacy*; Estlund, *Democratic Authority*.

14. Beetham, *The Legitimation of Power*; Margaret Levi, Audrey Sacks, and Tom R. Tyler, "Conceptualizing Legitimacy, Measuring Legitimizing Beliefs," *American Behavioral Scientist* 53, no. 3 (November 1, 2009): 354–375; Bruce Gilley, *The Right to Rule: How States Win and Lose Legitimacy* (New York: Columbia University Press, 2009).

15. From time to time the sociological concerns break into the normative discussion, e.g., debates about feasibility. See David Estlund, "Utopophobia," *Philosophy & Public Affairs* 42, no. 2 (March 2014): 113–134, and non-ideal theory, Charles W. Mills, "'Ideal Theory' as Ideology," *Hypatia* 20, no. 3 (2005): 165–184; A. John Simmons, "Ideal and Nonideal Theory," *Philosophy & Public Affairs* 38, no. 1 (January 2010): 5–36.

16. Raz, *The Morality of Freedom*; Raz, "The Problem of Authority."

17. Green, *The Authority of the State*.

18. Pettit, *On the People's Terms*.

19. Walter Benjamin, "Critique of Violence," in *Reflections* (New York: Schocken Books, 2007), 277–301.

20. That this presumption stands in need of defense becomes especially apparent in recent libertarian approaches to the legitimacy of the state. Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (Basingstoke: Palgrave Macmillan, 2012); Jason Brennan, "When May We Kill Government Agents? In Defense of Moral Parity," *Social Philosophy and Policy* 32, no. 2 (2016): 40–61.

21. The term regime comes from the Aristotelian definition of *politeia*: "an arrangement of a city with respect to its various offices, particularly the one that is supreme over all matters," in Aristotle, *Politics*, trans. C.D.C. Reeve (Indianapolis, IN: Hackett, 1997), 1278b10–11. In jurisprudential terms, political order corresponds to a legal system, defined as a union of primary and secondary rules (see Hart, *The Concept of Law*). Accordingly, a political order consists of abstract institutional features (what a Rawlsian would call constitutional essentials) as well as concrete instantiations of those features (e.g., how the ruling party or government is currently exercising power via those institutional features).

22. The idea that political orders make an essential claim is related to the idea that law makes a moral claim for itself. Though this idea goes back to Plato's observation that law aims at moral correctness (*Minos* 315–317), it continues to be defended today. Plato, *Complete Works*, ed. John Cooper and D. S. Hutchinson (Indianapolis, IN: Hackett, 2005), 1310–1313; Raz, *The Morality of Freedom*; John Gardner, "How Law Claims, What Law Claims," (Rochester, NY, 2008), <https://papers.ssrn.com>; Scott J. Shapiro, *Legality* (Cambridge, MA: Belknap Press, 2011).

23. David Beetham, *The Legitimation of Power*, 265.

24. I deliberately avoid the term private violence because many regimes have treated private violence as licit, i.e., authorized *de facto* if not *de jure* (e.g., domestic violence, corporal punishment).

25. In this sense my account differs from the vague proposal by Schmitt that the capacity to effectively determine who counts as a member of a community is definitive of political power. Carl Schmitt, *The Concept of the Political: Expanded Edition* (Chicago: University of Chicago Press, 2007).

26. Here I deliberately say *civil* war, because I think a warrior society that is engaged in regular military activity vis-à-vis outsiders (e.g., Sparta) can attain political legitimacy. Eliminating the threat of civil violence is also what social scientists take to be relevant for attaining legitimacy, in both established and emerging states. Kristin M. Bakke et al., “Convincing State-Builders? Disaggregating Internal Legitimacy in Abkhazia,” *International Studies Quarterly* 58, no. 3 (September 2014): 591–607; Kristin M. Bakke, Andrew M. Linke, John O’Loughlin, and Gerard Toal, “Dynamics of State-Building after War: External-Internal Relations in Eurasian *de Facto* States,” *Political Geography* 63 (March 2018): 159–173; Douglass C. North, John Joseph Wallis, and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009).

27. I defend this reading of Weber in Amanda R. Greene, “Legitimacy without Liberalism: A Defense of Max Weber’s Standard of Political Legitimacy,” *Analyse & Kritik* 39, no. 2 (2017): 295–324.

28. In the past I defended a view of legitimacy based on a form of tacit consent. Though the view remains broadly the same, I have come to think that this term is misleading. See Amanda R. Greene, “Consent and Political Legitimacy,” in *Oxford Studies in Political Philosophy*, Volume 2, ed. David Sobel, Peter Vallentyne, and Steven Wall (Oxford: Oxford University Press, 2016), 71–97).

29. One can accept that quality assent has value even if one is reluctant to assign it the name “political legitimacy.”

30. For a discussion of dependent non-instrumental valuation, see Martin E. Sandbu, “Valuing Processes,” *Economics and Philosophy* 23, no. 2 (2007): 205–235; Joseph Raz, “Facing Up: A Reply,” *Southern California Law Review* 62 (1988): 1228. There is a related debate in ethics about the relation between two distinctions: final/instrumental goods and conditional/unconditional goods: Rusty Jones, “The Real Challenge of the *Republic*” (presentation, Ancient Greek and Roman Philosophy Workshop, University of Chicago, May 6, 2015); Christine M. Korsgaard, “Two Distinctions in Goodness,” *Philosophical Review* 92, no. 2 (1983): 169–195.

31. This example is drawn from Plato’s *Laws*, where the main speaker compares doctors who address slaves with doctors who address free men

(*Laws*, 720). Plato, *Complete Works*, 1406. He analogizes willing acceptance of laws with the free person's willing obedience of a doctor. For discussions of the implication for Plato's late view of political authority, see Amanda R. Greene, "Legitimacy and Democracy: A Platonic Defense of Voluntary Rule" (PhD thesis, Stanford University, 2014).

32. The view was first outlined as the "sovereignty conception" in Greene, "Consent and Political Legitimacy."

33. For instance, Rawls treats stability as a problem of moral psychology that bears on justice only indirectly. He is concerned about individuals' beliefs and their consequence on the willingness to comply, and he treats this merely as a precondition rather than as an ingredient of justice. John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971), 336–337; Rawls, *Justice as Fairness*, 185–186.

34. Weber, *Economy and Society*, 213.

35. Beetham, *The Legitimation of Power*, 6.

36. Tom R. Tyler and Jonathan Jackson, "Future Challenges in the Study of Legitimacy and Criminal Justice" (Rochester, NY, 2013), <https://papers.ssrn.com>, 13.

37. Tyler, *Why People Obey the Law*.

38. J. Jackson et al., "Monopolizing Force? Police Legitimacy and Public Attitudes Toward the Acceptability of Violence," *Psychology, Public Policy, and Law* 19, no. 4 (November 2013): 479–497.

39. Edmund Burke, *Reflections on the Revolution in France*, ed. J.G.A. Pocock (Indianapolis, IN: Hackett, 1987), 67.

40. Gilley, *The Right to Rule*, 141.

41. Though I lack space to defend it here, I also see this alignment as corresponding to nineteenth-century ideals of recognition or subjective freedom.

42. This element of the view is the chief point of contrast with political theories that emphasize values like solidarity and reconciliation (e.g., communitarianism).

43. I take this to be little more than an elaboration of one way in which legitimate authority can be established through satisfaction of the "normal justification condition" that is outlined in Raz's service conception. Raz, "Problem of Authority," 1014.

44. I thank David Estlund for pressing me to clarify this point.

45. I regard this point as akin to the problem of proleptic reasons, as outlined recently by Agnes Callard. Taking the example of the music appreciation class, she argues that the new student cannot grasp the intrinsic value of music, but they nevertheless have a reason for enrolling that is related in a nuanced way to the intrinsic value of music. Agnes Callard,

“Proleptic Reasons,” in *Oxford Studies in Metaethics 11*, ed. Russ-Shafer Landau (Oxford: Oxford University Press, 2016), 129–155.

46. Simmons, *Justification and Legitimacy*.

47. For a rich discussion of how our theorizing ought to be responsive to the functional role of legitimacy assessments, see ch. 5 of Buchanan, *The Heart of Human Rights*.

48. For further elaboration of this advantage, see Greene, “Consent and Political Legitimacy,” 91.

49. Ilaria Cozzaglio, “Beliefs in Legitimacy and the Normative Role of Coherence” (presentation, Graduate Conference in Political and Legal Theory, University of Warwick, 2017).

50. However, this indirect relation might turn out to be very important. It might be that a new government within a state requires external resources and favor in order to govern effectively, and so external recognition becomes an essential precondition for securing internal legitimacy. Bakke et al., “Dynamics of State-Building after War.”

51. I thank R. J. Leland for pressing me to clarify this point.

52. Williams, *In the Beginning Was the Deed*.

53. I thank Robert Mark Simpson for pressing me to clarify this point.

54. For an argument that understanding legitimacy in terms of voluntary rule provides the most satisfactory explanation of the legitimacy of democracy, see Greene, “Legitimacy and Democracy: A Platonic Defense of Voluntary Rule.”

55. Williams, *In the Beginning Was the Deed*.

56. This idea is connected to Socratic cross-examination. Jonathan Lear argues that Socrates repeatedly shows his interlocutors that they are failing to live up to the essential implicit standards of being a human being, where these include epistemic and moral norms. The failure to live up to an ideal that is implicit in one’s self-presentation is a source of shame and internal dissonance. Jonathan Lear, *A Case for Irony* (Cambridge, MA: Harvard University Press, 2011).

57. Human rights discourse is accused of being an instrument of global hegemony, often with a sound historical basis. Samuel Moyn argues, for example, that the rise of human rights talk in international affairs coincided with America’s liberal internationalist approach to foreign policy, which was clearly to the economic advantage of the United States. Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press, 2010).

58. Peter, “Political Legitimacy.”

59. This leaves room for Ronald Dworkin’s proposal that the “internal legitimacy” of a state depends on its behaving morally in the international arena, since the state’s claim of authority over its citizens depends partly

on fulfilling its duty to uphold a system of international law. Ronald Dworkin, "A New Philosophy for International Law," *Philosophy & Public Affairs* 41, no. 1 (January 2013): 2–30.

60. John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Indianapolis, IN: Hackett, 1980), 106.

61. Williams, *In the Beginning Was the Deed*, 13.

62. A functionalist account of legitimacy has been defended by Buchanan in the past, although his views on legitimacy have evolved significantly. In his latest published work, he proposes that the exchange of legitimacy judgments allows for successful coordination on minimally justified institutions, i.e., the "meta-coordination view." In my view, this is still too functionalist—it *defines* the criteria for the concept in terms of one role it plays in coordinating joint action, as seen from the outside. Buchanan, *The Heart of Human Rights*.

63. For example, Thomas Shelby has argued that failures of justice for some subjects can affect their political obligations. Tommie Shelby, "Justice, Deviance, and the Dark Ghetto," *Philosophy & Public Affairs* 35, no. 2 (April 1, 2007): 126–160.

64. Mathew Coakley, "On the Value of Political Legitimacy," *Politics, Philosophy & Economics* 10, no. 4 (November 2011): 345–369.