Thomas Fossen

Facing Authority

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Introduction

When your friends call on you to take to the streets and demand the fall of the regime, and you wonder how to respond, this prompts a practical predicament: Shall I go to the square to join the protests, try to ignore them, or, perhaps, express my loyalty to the regime in counterprotest? What stance should I take toward the regime? This problem, which I will refer to as "the question of legitimacy," becomes particularly explicit and pressing at critical moments, such as popular uprisings, when a regime faces such massive opposition that its survival is at stake. But it is also a question that we all address in our everyday lives, if only implicitly, even where a regime is well established and generally accepted. We all find ourselves in a constellation of power in which various agencies and institutions attempt to rule us: regulating our behavior, providing education, raising taxes, controlling borders, granting or withholding citizenship, profoundly shaping our lives and even our sense of self in manifold ways. We inevitably comport ourselves toward those authorities in one way or another. Whether or not we stop to think about it, anyone facing authority also faces a practical predicament: Is this regime legitimate, or does it merely purport to be so? How to relate practically to the forms of power with which we find ourselves confronted?

What is at stake in the question of legitimacy is one's practical relation to what we may loosely call "the authorities" or the "regime." Of course, we can also speak of the legitimacy of particular leaders, laws, or political decisions. But the sense of political legitimacy at issue here goes deeper. The call for the regime to fall makes forcefully clear what is at stake: this is a struggle that touches on the political order as such; a conflict about the "right to rule."

Struggles for political legitimacy tend to be situations of deep disagreement. The authorities and their critics may not just disagree about whether the regime is entitled to rule, but also why. For someone who tries to address this question from a practical point of view—wondering what to do, what stance to take—it can give rise to profound, even existential uncertainty, raising dilemmas about how to spend time and energy, where one's loyalties lie, whether to risk life and limbs, and for what.

Faced with disagreement and uncertainty, political philosophers' ambition is often to try to resolve it. Theories of political legitimacy usually try to identify the necessary and sufficient conditions for a regime to be legitimate. On this approach, a theory of legitimacy is essentially a normative codification project. The thought is that if you find the correct principles, then you can adjudicate who is right in a struggle for legitimacy. A wide range of standards has been proposed, from the provision of order and stability to human rights, consent, or collective self-government. Yet despite the best efforts, principles and criteria of legitimacy remain subject to deep disagreement and profound uncertainty, both in theory and in practice. Of course, the persistence of controversy does not show that the true theory cannot be found. But perhaps it ought to give us pause to ask whether this quest for moral knowledge is the most fruitful approach and whether it departs from an adequate diagnosis of the problem.

This book takes a different approach. It investigates the ways in which the question of legitimacy can be addressed, practically, in lieu of a theoretical solution. The key is to shift focus from the justification of principles to the practice of judgment. What is involved in judging the legitimacy of a regime, from a practical point of view? And what does it mean to do this well? What can one do, and what must one know, in order to aptly respond to this question in conditions of uncertainty and disagreement? In my view, the philosophical task for a theory of political legitimacy is not simply to find the right principles, but more fundamentally to explicate the ways in which the question of legitimacy manifests itself from a practical point of view, and illuminate the forms of activity through which we might engage it.

This shift in focus is only meaningful if judgment is not simply a matter of applying given principles to the case at hand. Indeed, I will argue that such a view misses the depth and complexity of what is at stake in the question of legitimacy. To treat judgment as the application of normative standards is to relegate disagreement and uncertainty about such standards to another domain, that of justification. What makes a regime truly legitimate then seems to be a question for philosophy to settle by means of moral argument. But this is in effect to wish away, rather than confront, disagreement and uncertainty within the horizon of judgment, for it holds out the promise of a solution that is in practice always deferred.

In a nutshell, I propose that we view judging legitimacy not as a matter of applying given principles, but of engaging in a complex of political activities. Judging legitimacy is *doing* various things, comporting ourselves

toward others, toward ourselves, toward the regime, and to aspects of the world that surrounds us. Part I explicates this understanding of the concepts of political legitimacy and judgment. Part II investigates the concrete forms of activity that constitute such judgment. It argues that the question of legitimacy appears in three distinct but interrelated ways. Whether the regime is legitimate is partly a matter of what it is like, how it is aptly represented or portrayed—say, as a parliamentary democracy, or a police state? It is also a question of identity: Who am I, and who are we? Can I recognize myself in who the authorities take me to be? And it is a question of the meaning of events: What happened here—was it a coup, or a revolution? These issues constitute the heart of the question of legitimacy: to engage with them *is* to engage with the question of legitimacy.

On the account I develop, addressing these questions is not just a matter of reflection. To understand what it means for such judgment to go well, we need to grasp the form of the activities that constitute judgment, rather than fixate on which judgment is substantively correct. In judging, one partakes in the ongoing and open-ended practices of political contestation through which a regime is constituted as what it is, we become who we are, and our world takes shape. The practice of judgment is co-constitutive of its object, its subject, and its surroundings. This tells us something about what is at stake in struggles for legitimacy. It doesn't tell us which judgments we ought to make, what stance to take, who to be. This is not to deny that criteria play a meaningful role in judging, and that judging is partly a matter of articulating reasons. Rather, it is to draw attention to the ways in which reasons come into play while also remaining in question. In this sense, political reality resists the attempt to resolve the question philosophically. Good judgment is not a matter of correctly applying justified principles, but depends on our modes of involvement in a situation, on the ways in which we experience and re-spond to various aspects of political reality in conditions of uncertainty and disagreement.

What to expect from a theory of political legitimacy?

It may be best to announce clearly at the outset: the question of legitimacy will not be resolved here. Instead, progress lies in a better grasp of the problem, and of why it resists the kind of solution that philosophers have sought to provide for it. For the purposes of this book, I bracket the question of what

makes a regime legitimate. The brackets stay put for the duration of our enquiry and the question remains open.

What is offered here may be called a 'theory of political legitimacy,' but it differs significantly in shape and substance from what usually goes by that name in political philosophy or political theory (which I consider synonymous). For many philosophers, theorizing about political legitimacy just means articulating and justifying normative standards of legitimacy (as I discuss in Chapter 1). From that point of view, it may hardly sound intelligible to say that the present project bears on the same problem at all. I nonetheless think it is apt to call this a theory of legitimacy because the book aims to do what in my view a theory of political legitimacy ought to do in the first place, but is neglected by mainstream theories.

What I mean by a theory of political legitimacy is a philosophical framework for the analysis and diagnosis of a certain kind of political problem, that of how to relate practically to the political order with which one finds oneself confronted. I assume that the question of legitimacy is first and foremost a practical predicament that people face, implicitly or explicitly, in real-life political situations. The task of a theory of political legitimacy is to grasp the nature of that predicament, to render it perspicuous, to articulate what is at stake, and to illuminate the ways in which it might be addressed (if not resolved). By saying that the issue is in first instance a practical predicament I do not mean that a theory of legitimacy must offer readily applicable answers or policy recommendations, but that it should do justice to the ways in which the question manifests itself in practice. Prior to specifying when authorities are legitimate or illegitimate, we need to inquire *what it is we are doing* in asking whether a regime is legitimate or not—to make explicit how the question of legitimacy presents itself and engages us in practice.

One reason why it is important to think about political legitimacy in terms of judgment is that the neglect of this deeper question can lead to distortions and may ultimately render a theory meaningless. To see this, consider for a moment an example from a very different context, the field of aesthetics. Stanley Kubrick's *Napoleon* is sometimes called the "greatest film never made": Kubrick spent years of his life and thousands of dollars preparing for this movie, but he envisioned it on such a grand scale that the filming never got off the ground. Now imagine a group of academic philosophers in a seminar room who want to devise a theory of beauty, or of artistic excellence. It would be very odd if they were to do so by imagining what Kubrick's film

would have been like, hold that up as a paradigm of cinematic beauty, and try to draw up criteria of what makes it so. This would be odd not so much because there are no criteria of beauty, but because you cannot intelligibly claim to judge an object beautiful if you have never actually encountered it in the world, however much you learn about it from historical sources and the testimony of others. Aesthetic judgment emerges from the encounter with the object, from the interplay between subject and object. The aesthetic object needs to hold you in its thrall. Whatever these thinkers are doing, it is a very different practice from our everyday judgments of art, and it is hard to see how whatever they come up with in this manner would bear on the latter at all.

Could something similar be true of judging political legitimacy? To what extent does the concrete encounter between subject and authority have a similar significance with respect to the question of legitimacy, as the actual encounter with an artwork has for judgments of beauty? The point here is not to reduce politics to aesthetics. Rather, the point is that political philosophers should not simply draw up criteria, but try to think through what it means to judge legitimacy in practice, just as real philosophers of aesthetics (contrary to their imagined counterparts) try to think through the involvement of subject and object in aesthetic judgment. To draw attention to judgment is not an original move; there is a vast literature on political judgment (much of which is inspired by Kant's account of aesthetic judgment and Arendt's reading of it, which I discuss in Chapter 3). Yet theorists of judgment have hardly thought about political legitimacy, and theorists of political legitimacy have hardly thought about judgment.

We can approach this point also from the angle of a theory of meaning. Our imaginary aestheticists have started a new language game in their seminar room, deploying words familiar from everyday art criticism in novel ways. That happens all the time in academic discourse and is not per se problematic. It becomes problematic if one makes the mistake of simply assuming that theoretical concepts have the same significance in the context of an academic dispute as the practical concepts from which they are derived do in the relevant practice. Differences of context between practical situations (like the seminar room and the barricades) and differences of perspective among people within them matter. At least they do on the pragmatist theory of meaning with which I operate (more about this in Chapter 2). This book is an attempt to think through how such differences of context and perspective matter to a specific kind of political predicament.

This presupposes a distinction—albeit not a rigid one—between theory and practice. Thinking philosophically about political legitimacy is not exactly the same activity as disputing legitimacy *in situ*. That does not mean that these activities can be isolated from each other, or that theories relate to politics from the "outside." But insofar as political philosophy seeks to understand political phenomena, and not directly change them, it is a second-order practice. While nowadays this is for the most part an academic enterprise, it is not disconnected from its subject matter, and political agents (including philosophers themselves) can draw on ideas and arguments proposed there while engaging in political action and discourse. More directly, philosophical theories can themselves be put forward as political interventions, as historical works of political theory often were. So philosophical dispute and political performance are not mutually exclusive categories. Thomas Hobbes's *Leviathan* is a paradigmatic example. While Hobbes did indeed offer something we can see as a criterion of legitimacy (roughly, that one ought to accept any regime that is reasonably effective at securing order and stability), he did so in the context of a much deeper enquiry into what it means to be a political subject, the nature of authority, and the place of both in the world—thereby engaging performatively in the forms of activity that I take to be constitutive of judging legitimacy. And the manner in which he did so, both in terms of the topics he addressed, and the rhetorical force and framing of his project, evinces an acute sense of the conditions of his own involvement.

Contemporary theorists of legitimacy could insist that their work should likewise be understood as a situated political performance. And yet (as we shall see in Chapter 1), their project is often framed far more narrowly as a quest for correct normative standards, in abstraction from seemingly "descriptive" concerns about the nature of power and the identity of subjects, which are relegated to the social sciences. What is missing here is a reflexive sense of the forms of activity—and of judgment—one engages in when proposing such a theory, as well as curiosity about what else might be involved in addressing the issue besides exchanging moral arguments. There are important exceptions. Chapter 1 also shows that Jürgen Habermas and John Rawls are highly attentive to the specificities of the context and perspective from which their principles of liberal and democratic legitimacy are supposed to make sense, and that these principles are not to be taken as adjudicating but rather expressing the legitimacy of a regime as such. Still, they do not give us an explicit alternative account of what is involved in judging the legitimacy of a regime.

It does not follow from my refusal to offer prescriptions that the theory offered here is merely descriptive. To classify theories as purely "normative" or "descriptive"—often with the insinuation that the latter properly fall within the remit of social science, not philosophy—gives the misleading impression that those endeavors are conceptually independent and can be meaningfully pursued in isolation from each other. This study takes its bearings from the philosophy of language, theories of action, and political ontology rather than moral theory. But it is normative in a sense, not because it aims to solve political questions with action-guiding answers, but because it tries to explicate the political point of an irreducibly normative concept, to offer a sense of orientation to what is salient where legitimacy is in question from a practical point of view, and to articulate what it means to judge well in such situations.

Overview

The first part of this book develops a philosophical vocabulary for grasping the question of legitimacy. Part II goes on to explore in detail three distinct ways in which the question of legitimacy manifests itself in practice. Chapter 1 examines how the question of legitimacy is framed in contemporary approaches, by explicating their largely implicit views of judgment. Despite the variety in content, so-called moralist and realist theories of legitimacy typically share the same *form*, which I call "normativism": a theory of legitimacy is a codification project, concerned with the articulation and justification of normative standards. This assumes that judging legitimacy appropriately is a matter of applying the principles offered by a philosophical theory to a case at hand. According to this picture, disagreement and uncertainty are to be addressed at the level of justification; there is no room, within the horizon of judgment, for coping with them. Even political realists, who argue that the moralist mainstream of political philosophy is out of touch with reality, have not developed a significantly different way of thinking about the question of legitimacy: they tend to look for alternative, nonmoral criteria of legitimacy, but they leave unquestioned the underlying presupposition that distinguishing between legitimacy and illegitimacy is a matter of applying given principles. The chapter goes on to argue that John Rawls and Jürgen Habermas exemplify a different picture of how principles relate to practice, which is more attuned to the political conditions in which the question of legitimacy arises, albeit in the highly particular setting of liberal

democracies. Still, their grasp of what judging the legitimacy of a regime involves remains implicit in the performative upshot of their writings.

What does it mean to say that a regime is legitimate or illegitimate? Chapter 2 draws on recent pragmatist philosophy of language, especially the seminal work of Robert Brandom, to conceptualize political legitimacy in a way that avoids the dichotomy between the normative and the descriptive. It develops a conception of politics as stance taking toward rule, and explains the meaning of the concept of political legitimacy in terms of the use of 'legitimacy' in that form of political practice. The role of the concept of legitimacy in this type of context is to make your practical stance toward the regime explicit and to dispute it with others. Legitimacy isn't a self-standing property that political authorities have or fail to have under certain independently specifiable conditions. Rather, it is a normative status that is attributed or withheld from concrete, embodied perspectives of political subjects taking stances toward a regime. A key challenge in this chapter is to explain the difference between legitimacy *de jure* and *de facto*—what it means for something to *be* legitimate, as opposed to its merely being *taken* as such by others, or indeed by oneself. The key is to interpret this difference in terms of the differences of perspective among participants engaged in stance taking, rather than with reference to a property with independently specifiable necessary and sufficient conditions. The distinction between something's being legitimate and its being merely taken as such arises, and only makes sense, from a practical point of view. The resulting view both avoids positing perspective-independent moral properties to which judgments are answerable, and steers clear of the Weberian collapse of normativity into facticity, which is common in social-scientific approaches to legitimacy, although it does not tell us whether to call a regime legitimate or illegitimate in concrete cases.

Chapter 3 turns from the meaning of legitimacy to the problem of judgment. Judgment is understood here as a complex of practical activities through which our sense of political reality is constituted, maintained, transformed, and sometimes subverted. This contrasts with two predominant models in political theory: judgment as norm application and reflective judgment. Despite their differences, those two models have assumptions in common: they identify judgment with a discrete moment of decision and with the exercise of a specific mental capacity (or an interplay of mental capacities). In contrast, judgment is cast here as an ongoing, open-ended, and intersubjective practice. Perhaps counter-intuitively, decisions are not

decisive for judging; to judge is to partake of a practice. This enables us to rethink what it is for political judgment to go well or poorly, drawing attention not to the operations of our minds, but to the specific forms of practical involvement in a situation and engagement with others that constitute judgment; to what one can *do*, practically, rather than what one should *know*, theoretically, in addressing the question of legitimacy. What makes political judgment such a challenge is not so much our lack of philosophical knowledge (what is usually meant by a "theory of legitimacy"), but rather the stubborn character of political reality and the precariousness of our practical grip on that reality.

To get a more concrete understanding of what is involved in judging legitimacy, we need to develop a more textured account of the activities that constitute judgment in a struggle for political legitimacy. Part II builds on the theoretical framework developed in Part I to investigate the ways in which people can practically engage with the question of legitimacy, and what it means to do this well.

The philosophical question at stake in Chapter 4 is how judgment (of legitimacy) relates to its object—political authorities. Is the regime aptly called a parliamentary democracy, or an arm of global imperialism? Are the leaders genuinely elected representatives, or a gang of thugs? Normativist approaches treat these questions as preliminary matters, prior to judging legitimacy. In contrast, on the view presented here, the question of legitimacy is profoundly a matter of what power is like in a particular context. The practice of representing power is integral to judging: judging legitimacy is a matter of representing or portraying relations of power. To call the form of power with which one finds oneself confronted a "state," for example, is not merely to describe it, but to partake of the practice of representation through which the state is constituted as what it is. Judgment is co-constitutive of its object. Good judgment, then, is not simply answerable to reality (truthfulness)—doing justice to the way things are with the regime—but also has a creative dimension (virtuosity).

Chapter 5 considers the role of the *subject* of judgments of legitimacy: someone who finds themself confronted by power. Philosophically, what is at stake here is how to grasp the relation between identity and political legitimacy. Does the appeal, in many struggles for legitimacy, to a sense of who "I" am or who "we" are simply reflect a contingent psychological disposition, or is there some internal, conceptual connection with legitimacy? How, if at all, does one's identification with a nation, gender, or otherwise bear

on the legitimacy of the regime with which one finds oneself confronted? The chapter proposes that identification is integral to judging legitimacy. Identity is not a ground for an answer to the question of legitimacy, but part of what is at stake in it. A struggle for legitimacy is a struggle over the constitution and characterization of collective selfhood, and judging legitimacy is to partake in such a struggle. The question of legitimacy is an existential predicament: a question of who you are. I explicate three qualities of this dimension of judgmental practice: consistency, integrity, and responsiveness.

Having considered the role of the object of judgment and the identity of the judging subject in judging legitimacy, it remains to explore how judgment relates to its *surroundings*, in Chapter 6. The encounter between subject and authority is temporally and spatially situated, and *where* and *when* it occurs matter to the judgment that is called for. The chapter focuses specifically on the significance of historical and current events for judging legitimacy. Whereas normativist approaches take events as fixtures by treating their meaning, at the moment of judgment, as a given, I build on the initial account of the temporality of the act of judgment advanced in Chapter 3, to propose that we think about judgment 'in the present progressive,' as standing in an open-ended practical relation to events. In taking a stance toward the regime, a judging subject responds to and partakes in events. Such judgment is therefore exposed to the disagreement and uncertainty to which the questions "What is happening?" and "When are we?" give expression. Coping with these questions involves grappling with the ways in which multiple timelines intersect and clash in an encounter between subjects and authorities. Judgment in this respect is a matter of engaging in a dimension of political activity that I shall call 'timecraft.' Here, again, I close by reflecting on the virtues of this judgmental activity, which I label *kairos*, *virtù*, and (again) responsiveness.

PART I
THE QUESTION OF LEGITIMACY

1

Beyond Codification

1.1 Introduction

What is involved in judging the legitimacy of a regime, and what does it mean to do this well? Theories of legitimacy rarely address this question explicitly.[1] But that does not mean they do not have a view about it. This chapter aims to reconstruct the largely implicit views of judgment in the approaches to political legitimacy that predominate today, and to highlight some of their presuppositions.

Surveying the academic landscape, one cannot fail to notice a chasm between philosophical and social scientific approaches to the topic. As many an encyclopedia entry attests, philosophers work with a normative conception of legitimacy and social scientists with a descriptive one.[2] Political legitimacy in the normative sense refers to a normative status of political institutions, usually understood as the moral right to rule. The task description assigned to philosophers is to specify the necessary and sufficient conditions for political authority to *be* legitimate (*de jure*). Which moral standards must a regime meet to qualify as legitimate? Social scientists, in contrast, typically abstract from the normative status of a regime and examine the empirical conditions and effects of its being *taken to be* legitimate by subjects (*de facto*). Under what conditions are individuals or groups likely to hold a state to be legitimate, and what effects does the belief in legitimacy have on a political system?

In terms of judgment, according to this division of labor, it would be for social scientists to enquire how people in fact judge, while philosophers ask not exactly how people can or should judge, but rather *which* judgments they *ought* to render.[3] You may already see a gap opening up here, for neither

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[1] The only study I have found that directly speaks to this is the following insightful essay: Mulligan, "Legitimacy and the Practice of Political Judgement."

[2] For example: Ansell, "Political Legitimacy"; Beetham, "Legitimacy"; Dogan, "Conceptions of Legitimacy"; Flathman, "Legitimacy"; Peter, "Political Legitimacy"; Simmons, "Legitimacy"; Bagg and Knight, "Legitimacy."

[3] As to the former, see Jost and Major, *The Psychology of Legitimacy*.

approach raises the question of what it means to judge well. As I will argue, Max Weber's social scientific redefinition of legitimacy in terms of people's beliefs has driven a wedge between the practical meaning of the term and its scholarly use, generating persistent confusion. Meanwhile, philosophers' focus on what "makes" a regime legitimate treats legitimacy as an abstract normative property, without illuminating the practical predicament at issue. Much philosophical work on legitimacy shares a distinctive form (despite the variety in content), which I call "normativism": the theorist aims to articulate and justify normative standards, presupposing that judgment is a matter of applying such standards to a case at hand. A theory of legitimacy becomes essentially a codification project. This framing of the problem has become so ingrained that it tends to be taken for granted. As we will see, even political realists who recently proposed alternatives to the moralism of mainstream theories remain committed to normativism. But this is, in fact, a very narrow understanding of what a theory of legitimacy is supposed to offer. None of these approaches has paid sustained attention to the ways in which the question of legitimacy presents itself, and the forms of activity through which it might be addressed in practice (if not resolved).

To begin to explore what a different way of thinking philosophically about legitimacy might look like, I turn to John Rawls and Jürgen Habermas. In their theories, principles have a rather different role than in normativist theories: they express rather than adjudicate judgments of the basic legitimacy of a constitutional-democratic regime. Neither Rawls nor Habermas purports to resolve the question of legitimacy philosophically. But if their principles are expressive of the legitimacy of the regime as such, they do not seem to get to the bottom of the problem. Still, I find implicit in the performative upshot of their theories of constitutional democracy intimations toward a different picture of what judging the legitimacy of a regime involves. Pursuing those intimations points us toward a "pragmatist" approach. It shifts the direction of enquiry from the content of principles to the activity of judging. The task for a theory of legitimacy, on this view, is in first instance to grasp the various ways in which questions of legitimacy present themselves in concrete situations, prior to, and perhaps instead of, resolving them philosophically.

The aim of this chapter is to explicate these notions of judgment and thereby to undermine normativism's *prima facie* self-evidence—not to refute it. The limitations of normativism will come into view over the course of the book. Each of the chapters in Part II argues, in a different way, that

normativism is not equipped to respond to disagreement and uncertainty within the horizon of judgment. Instead, disagreement and uncertainty are relegated to the domain of justification, which is logically prior to judgment but in practice indefinitely deferred. This holds out the promise that the question of legitimacy will be philosophically resolved, but in effect merely wishes away uncertainty and disagreement.

1.2 Weber's legacy

The traditional division of labor has its roots in the early twentieth century in the inestimably influential work of Max Weber.[4] Weber insisted emphatically on a strict separation of facts and values. Only the former are the proper object of study of social scientists in their role as scientists. It wasn't that social scientists ought not concern themselves with value judgments; Weber often involved himself in political debates. Nor did he mean that discussions of value were pointless or meaningless. Rather, his claim was that scientists should be clear about the status of their claims. Science has a kind of authority over matters of fact that it lacks over matters of normative evaluation, and scientists should not misuse their academic status to give undue credence to unscientific claims:

> There is no (rational or empirical) scientific procedure of any kind whatsoever which can provide us with a decision here. The social sciences, which are strictly empirical sciences, are the least fitted to presume to save the individual the difficulty of making a choice, and they should therefore not create the impression that they can do so.[5]

Underlying this view of the task of social science was a view of the nature of normativity. Normative questions cannot in principle be rationally settled. Meaningful discussion of values is possible, but the point of such discussion

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[4] 'Legitimacy' has a long-standing history, both as a philosophical term of art and as a practical political concept. In a detailed history of the term, Thomas Würtenberger locates its emergence as a key term of political contestation in the early nineteenth century, although it played a role in philosophical discourse about the state long before that. Würtenberger, "Legitimität, Legalität," 678. See also Mulligan, "The Uses of Legitimacy in International Relations," 356–62; Applbaum, *Legitimacy*, 21–22.

[5] Weber, "The Meaning of 'Ethical Neutrality,'" 19.

is not to justify the grounds of a decision, but to clarify what one is ultimately committed to.

In this light, it may strike us as paradoxical that legitimacy, a normative concept par excellence, is primarily a sociological category for Weber, rarely found in his political writings. But the meaning of legitimacy in Weber's sociology is equivocal. On the one hand, he refers to legitimacy as an entitlement claimed by authorities: "Every [system of rule] attempts to establish and to cultivate the belief in its legitimacy."[6] Believing in legitimacy is a matter of regarding the authorities "as in some way obligatory or exemplary."[7] Here, legitimacy clearly figures as a normative concept. But in a move that remains a source of confusion and ambiguity in the social-scientific literature, Weber then goes on to redefine legitimacy, for sociological purposes, in terms of the belief in legitimacy: "Naturally, the legitimacy of a system of [rule] may be treated sociologically only as the probability that to a relevant degree the appropriate attitudes will exist, and the corresponding practical conduct ensue."[8] So Weber uses "legitimacy" in two different ways, corresponding to two different perspectives or standpoints. From a participant's perspective, it refers to an order's normative status, its binding or obligatory character, the validity of which is beyond the pale of social science. From an observer's point of view, it is a descriptive measure of the extent to which individuals attribute this normative status to a regime. The latter is sociologically relevant because of the efficacy of the beliefs or attitudes of a population for the operation of political institutions.

Weber's descriptive redefinition of legitimacy in terms of belief in legitimacy is unfortunate. One could avoid the circularity by appealing to cognate terms, speaking, for example, of belief in "rightness" or "propriety."[9] But the problem remains that legitimacy, from a first-person perspective, is a normative status, as Weber himself notes. From a practical point of view, whether something is legitimate and whether it is taken or treated as such are clearly distinct questions. When a crowd cries "illegitimate" in front of a government building, they are not issuing a report about their lack of support, but a reproach. And when a president claims that they are the only one

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[6] Weber, *Economy and Society*, 1:213. I translate *Herrschaft* as "rule" rather than "domination" because "domination" carries a negative connotation of naked power that "rule" and "Herrschaft" do not.

[7] Weber, 1:31.

[8] Weber, 1:214.

[9] Easton, *A Systems Analysis of Political Life*, 278; cf. Nozick, *Anarchy, State, and Utopia*, 134; Simmons, "Justification and Legitimacy," 749.

who can legitimately rule, they thereby imply that their rule ought not to be subverted. Weber's redefinition tempts scholars to lose track of the difference of perspective involved between a practical and a sociological context, and to equivocate between saying that a political authority is *taken* to be legitimate (*de facto*) and that it *is* legitimate (*de jure*). This conflation of legitimacy and belief in legitimacy can be found in much of the social-scientific literature after Weber.[10] As a consequence, it comes to look as though being legitimate were "merely a matter of having obedient followers," as one commentator aptly put it (and as many others similarly argued).[11]

Many social scientists nowadays take care to acknowledge that legitimacy is also, and perhaps first and foremost, a normative concept.[12] No doubt this is due, in part, to David Beetham's influential critique of Weber. Beetham argued that it is crucial, also for the purposes of social science, to conceptualize legitimacy as a normative status. A legitimacy claim is an assessment of the quality of a regime, not of people's beliefs about it. "[T]he social scientist, in concluding that a given power relationship is legitimate, is making a *judgement*, not delivering a *report* about people's belief in legitimacy."[13] What makes such judgments scientifically respectable for Beetham is that the social scientist does not judge by reference to his or her own preferred standards, but by standards that "pertain within the society in question."[14] A social-scientific judgment of legitimacy is one of "legitimacy-in-context, rather than absolutely, ideally or abstractly."[15] This stands in contrast to philosophy, which he sees as concerned with "independent or universal criteria of the right or the good."[16]

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[10] Here's a sampling: Dahl, *Modern Political Analysis*, 53–54; Easton, *A Systems Analysis of Political Life*, 287–88; Lipset, "Social Conflict, Legitimacy and Democracy," 88; Weatherford, "Measuring Political Legitimacy"; Zelditch, "Theories of Legitimacy," 33.

[11] Turner, "Review," 1045; cf. Schaar, "Legitimacy in the Modern State," 108; Pitkin, *Wittgenstein and Justice*, 280–86; Habermas, *Legitimation Crisis*, 97–102; Grafstein, "The Failure of Weber's Conception of Legitimacy." Amanda Greene defends the moral value of Weber's conception of legitimacy: Greene, "Legitimacy without Liberalism."

[12] For example, Gilley, *The Right to Rule*, 3; Hurrelmann, Schneider, and Steffek, *Legitimacy in an Age of Global Politics*, 3; Zelditch, "Theories of Legitimacy," 33.

[13] Beetham, *The Legitimation of Power*, 13. Beetham's book sparked a debate about the usefulness of the concept of legitimacy in social science: O'Kane, "Against Legitimacy"; Beetham, "In Defence of Legitimacy"; Barker, "Legitimacy: The Identity of the Accused"; O'Kane, "Legitimacy and Political Science." Hurrelmann, Schneider, and Steffek see Beetham as exemplifying a turn toward processes of legitimation; *Legitimacy in an Age of Global Politics*, 8–9. Beetham's conception was taken up, for example, by Gilley, *The Right to Rule*. For related discussions, see also Coicaud, *Legitimacy and Politics*; Barker, *Legitimating Identities*.

[14] Beetham, *The Legitimation of Power*, 13.

[15] Beetham, 14.

[16] Beetham, 13, cf. 5–7.

In spite of his emphatic critique of Weber,[17] Beetham's own conceptualization falls prey to the same problem. If the social scientist is to abstain from applying his or her own criteria, then whose standards of legitimacy are to count? Those that pertain in the society, Beetham says. But what if there is disagreement about these criteria within a society? Which and whose criteria are to count as the standards *of the society*? The social scientist will want to remain neutral here. So one answer might be to refuse to decide, and say that legitimacy is a matter of degree: the more people in terms of whose beliefs the authorities can be justified, the more legitimate they are. Indeed, this is what Beetham's view boils down to. He says: "A power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of* their beliefs."[18] But is this proposal so different from Weber's, after all? Despite Beetham's insistence that social scientific claims about legitimacy are judgments, they remain reports or descriptions of a sort—of "the degree of congruence . . . between a given system of power and the beliefs, values and expectations that provide its justification"[19]—and not attributions of a normative status. Consequently, the concept of legitimacy means something very different in the hands of the social scientist than in the hands of those claiming and contesting legitimacy in practice. Again, whether something *is* legitimate, and whether it conforms to any number of people's standards of legitimacy—these are not the same question. Although Beetham is clearly aware of the distinction, his redefinition of legitimacy obscures it because it drives a wedge between what 'legitimate' means in the mouth of a participant and a scientific observer—exactly the problem with Weber. In the next chapter, I pursue a strategy for conceptualizing political legitimacy that clears up this lingering confusion between something's being legitimate, and its merely being taken as such, by attending to the different perspectives from which legitimacy is attributed or withheld.

1.3 The right to rule

In opposition to the reductive definitions of legitimacy put forward in the social sciences, political philosophers have always insisted that we must distinguish carefully between something's being legitimate and its merely being

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[17] He calls Weber's influence "an almost unqualified disaster." Beetham, 8.
[18] Beetham, 11.
[19] Beetham, 11.

taken as such. Legitimacy is at bottom a normative, perhaps even moral, concept.[20] If a population generally supports the authorities, are they *ipso facto* legitimate? Could it not be the case that the people are mistaken, deceived, tricked, or bullied into compliance? If so, how are we to decide? How can we distinguish between political authority that is legitimate *de jure*, and political authority that merely purports to be so, and is perhaps *de facto* taken as such? The given beliefs or attitudes of its subjects don't seem to settle the question.[21]

If social scientists focus on the empirical efficacy of people's *taking* the authorities *as* legitimate (or illegitimate), philosophers usually aim to articulate the necessary and sufficient conditions for it to really *be* legitimate, or to have the "right to rule." Their self-ascribed task is to determine the criteria by which political authority ought to be judged, as opposed to the empirical circumstances in which it is, in fact, accepted or not. As Robert Paul Wolff expresses this division of labor:

> The study of the forms, characteristics, institutions, and functioning of de facto states, as we may call them, is the province of political science. If we take the term in its prescriptive signification, the state is a group of persons who have the right to exercise supreme authority within a territory. The discovery, analysis, and demonstration of the forms and principles of legitimate authority—of the right to rule—is called political philosophy.[22]

Usually, the right to rule is conceived as a moral right and legitimacy a moral property, although what that means is typically less than clear.[23] Political philosophy is then a kind of applied ethics. In the words of Robert Nozick:

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[20] "Of course, insofar as it is the positive attitudes and beliefs of subjects that reliably produce their compliance with and support for states and regimes, . . . it is understandable that social scientists have tended to focus on these attitudes and beliefs. For, as social scientists, we are rightly interested in what produces compliance. . . . But we should not confuse these perfectly reasonable concerns with the quite distinct concerns we have about the moral legitimacy of states or governments." Simmons, "Justification and Legitimacy," 750. See also note 11.

[21] Of course, one influential tradition, consent theory, holds that acceptance by subjects is exactly what confers legitimacy on political authority. But that raises the further question of the conditions under which such consent is to be considered binding, and why one should take *that* to be the relevant standard.

[22] Wolff, *In Defense of Anarchism*, 5. See also Simmons, *Moral Principles and Political Obligations*; Flathman, "Legitimacy"; Copp, "The Idea of a Legitimate State," 4; Christiano, "Authority"; Huemer, *The Problem of Political Authority*; Buchanan, "Political Legitimacy and Democracy," 689; Estlund, *Democratic Authority*, 2; Green, *The Authority of the State*, 5.

[23] A minority of theorists tries to justify principles of legitimacy prudentially or instrumentally rather than morally. See Kühnelt, *Political Legitimization without Morality?*

> Moral philosophy sets the background for, and boundaries of, political philosophy. What persons may and may not do to one another limits what they may do through the apparatus of a state, or do to establish such an apparatus. The moral prohibitions it is permissible to enforce are the source of whatever legitimacy the state's fundamental coercive power has.[24]

Theorists in this tradition have produced a wide array of competing views, defending *inter alia* the consent of the people, democratic procedures, a modicum of peace and stability, or respect for human rights as valid criteria or conditions of legitimacy. It is not necessary to treat these accounts comprehensively here. What is crucial is how the question of legitimacy is framed as a philosophical problem: a quest for the discovery of valid principles. It is assumed that legitimacy is a problem that can be resolved, at least in theory, by finding the correct standard. The task description for philosophy becomes the mirror image of Weber's purely empirical social science, aspiring to provide the authoritative, rationally grounded moral knowledge he took to be impossible.

For lack of a better word, I will refer to this framing of the question of legitimacy as calling for a resolution by appeal to the right principles, and the associated task description of political philosophy as focused on finding such principles, as "normativism."[25] "Moralism" is just one possible form of normativism, which holds that such norms must be moral in character. It is easy to see why this approach has wide appeal: it promises to resolve the question of legitimacy by giving us a secure standard, a kind of knowledge unencumbered by the relations of power that we seek to assess, which provides critical leverage against the authorities we face.[26] It helps us to speak truth to power. Indeed, it seems to many philosophers obvious that this form of knowledge—a set of determinate normative criteria—is just what we ask

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[24] Nozick, *Anarchy, State, and Utopia*, 6.

[25] For a similar term of art (with wider extension), see Sluga, *Politics and the Search for the Common Good*.

[26] In case one thinks it is a caricature to cast moralists as aiming to resolve disagreement, the aspiration is quite explicit in this recent defense of moralism: "In a purely normative sense of 'resolve', a principle resolves a disagreement when it yields an answer as to which party or parties to the disagreement (if any) are right [just any answer? the correct answer? an acceptable answer?—TF]. But this doesn't entail that the disagreement is *de facto* 'resolved,' in the sense that there is actual agreement that this answer is correct. Moralists claim that their principles resolve disagreement in the normative, not the *de facto*, sense." One may wonder how principles can have this normative power apparently without even needing to be applied. Leader Maynard and Worsnip, "Is There a Distinctively Political Normativity?," 769–70.

for when we raise a question of legitimacy. Just consider the apparent self-evidence with which Nozick and Wolff posit their definitions of the task of political philosophy.

Judging legitimacy—distinguishing in practice whether a regime is legitimate, or merely purports to be so—is at most an afterthought for normativists. If theorizing legitimacy is all about the content and justification of principles of legitimacy, then judgment seems just to be a matter of applying such principles to particular cases. If you find yourself confronted with a regime, and want to know whether it is legitimate, you need to appeal to two distinct forms of knowledge: *principles* and *facts about the case*. These forms of knowledge are usually assumed to be independent: the former are to be established by moral theory (a "theory of legitimacy"), the latter by empirical enquiry. Take, for example, theories that posit express consent, rational acceptability, or democratic procedures as the proper standard of legitimacy.[27] Judging the legitimacy of a regime would then be a matter of determining whether its subjects consented to its rule; whether it met standards of reasonableness;[28] or whether it ruled democratically. To see this at work in a nutshell, consider the following passage from John Simmons:

> The proper grounds for claims of legitimacy concern the transactional components of the specific relationship between individual and institution. Because I subscribe to political voluntarism as the correct account of these transactional grounds for legitimacy, and because I believe no actual states satisfy the requirements of this voluntarism, I also believe that no existing states are legitimate (simpliciter).[29]

Simmons's judgment appeals to a factual claim about actual states, and a normative doctrine, "voluntarism," which is the idea that individuals can become bound by obligations only through an act of their own will. Judgment takes the form of a subsumption of the former under the latter.

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[27] See, respectively, Simmons, "Justification and Legitimacy"; Nagel, *Equality and Partiality*; Christiano, "The Authority of Democracy."

[28] We would have to know what those standards are, of course, and for Nagel, determining that is precisely the crucial task for political theory: "The question is, what supplies the standard of reasonable, morally permissible rejection which provides the true test of the legitimacy of a system, as opposed to rejection based only on superior leverage and unmodified self-interest?" Nagel, *Equality and Partiality*, 39.

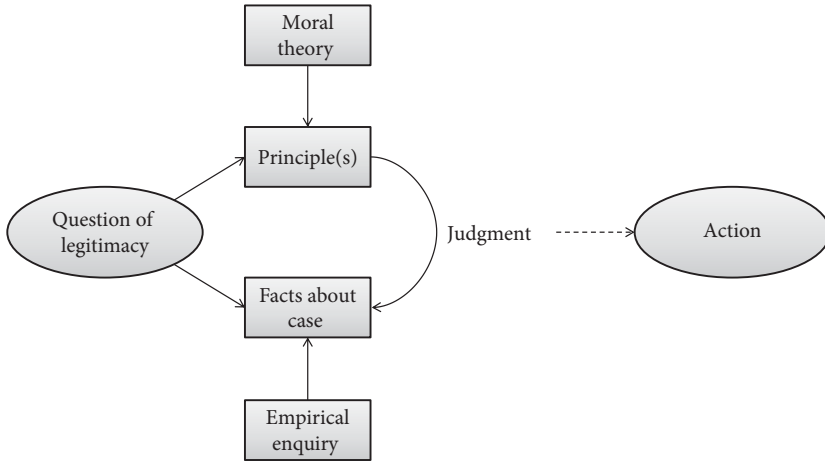[29] Simmons, "Justification and Legitimacy," 769.

Figure 1.1 The role of judgment implicit in moralist theories of political legitimacy.

This picture corresponds to a common but controversial view of judgment in moral philosophy: to judge is to apply a general norm or principle to a particular case (see Figure 1.1). As Immanuel Kant observed, norms never simply dictate their application.[30] If propriety lies in conformity with a rule, and if a rule cannot dictate its own application, something else is required, in addition to the rule and the facts about the case, to establish whether or not an act is appropriate. That extra is the act of practical judgment. Judgment is what bridges the gap between principles and concrete actions. Various moral and legal philosophers have offered complex accounts of what norm application involves, while others have called the whole picture into question, criticizing the very idea that morality should be understood in terms of general principles.[31] But such disputes about judgment have not seeped into the debate about political legitimacy.

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[30] "[N]o matter how complete the theory may be, a middle term is required between theory and practice, providing a link and a transition from one to the other. For a concept of the understanding, which contains the general rule, must be supplemented by an act of judgment whereby the practitioner distinguishes instances where the rule applies from those where it does not. And since rules cannot in turn be provided on every occasion to direct the judgement in subsuming each instance under the previous rule (for this would involve an infinite regress), theoreticians will be found who can never in all their lives become practical, since they lack judgement." Kant, "On the Common Saying," 61.

[31] The first category includes Richardson, "Specifying Norms"; O'Neill, "Normativity and Practical Judgement." For the second, see, for example, McDowell, "Virtue and Reason"; Dancy, *Ethics without Principles*; Lance and Little, "Defending Moral Particularism." The complications of norm application are also well known in legal theory, and scholars there see adjudication as much more complex than the subsumption of a particular under a given rule. For example, Alexy, "On Balancing and Subsumption."

Five aspects of this picture are worth highlighting. First, judging is construed as a subjective moment of decision, a conscious act of bringing principles to bear on a case. As such, it precedes action in public. Because it occurs *in foro interno*, the subject is sovereign over his or her judgment: its content is determined solely by the subject's will or intention. This equation of judgment and decision is commonplace, but it is not self-evident. In Chapter 3, I contrast this with a non-sovereign view of judging as an ongoing and intersubjective activity.

Second, for this act of judgment to begin, two forms of knowledge must be treated as given: a theory of legitimacy (as conventionally understood) and a factual understanding of the situation. These must be on hand. This is not to suggest that they must be certain or infallible, but as far as judgment is concerned, they must be treated as settled: one must proceed as if the facts and norms are given. The activities that issue in such knowledge are not themselves part of judging legitimacy: they are a matter of philosophical justification, where the norms are concerned, and of empirical enquiry to sort out the facts, perhaps with the help of social science or journalism. In other words, one must first obtain the right normative standards and get a grip on the situation, then judge whether or not the authorities are legitimate. To be sure, this view allows that theoretical justification and empirical enquiry involve judgments of some sort, but it would a different kind of judgment. Onora O'Neill expresses this clearly:

> When we act we may as a preliminary matter have to decide how to view the situation in which we already find ourselves . . . : here reflective judgement may indeed be needed. But even when reflective judging is completed, and we have determined how to view the situation, we will still need to decide what to do: and that is where practical judgement does its work.[32]

This sequencing makes it rather difficult to see how practical judgment can get off the ground when we still face disagreement and uncertainty about the relevant criteria and about key aspects of the situation, as is frequently the case in situations where legitimacy is in question.

Third, the picture invokes a fairly strict separation of justification and application, or theory and practice. It is true that application is often seen to

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[32] O'Neill, "Normativity and Practical Judgement," 402–03. More in Chapter 3 about theories of reflective judgment, to which O'Neill refers here.

have a role at the theoretical level as well, as when theorists try to come up with examples and counterexamples in justifying or refuting certain principles. Various approaches in moral philosophy deny that the content and justification of principles are independent of their application. For instance, Rawls' "reflective equilibrium" approach to justice involves a back-and-forth between formulations of principles and considered judgments of concrete cases.[33] Still, while this results in a more complex and perhaps more contextual picture of the theoretical enterprise, it does not involve a rethinking of what is involved in a practical encounter with authorities. The fact that historical and hypothetical examples are usually seen as functioning just as well for theoretical purposes is revealing. From a practical point of view, judging legitimacy is just a matter of applying principles. This is what enables Simmons, in the passage quoted above, to judge all states illegitimate in one fell swoop.

The fourth point is closely related: this picture relies on the crucial assumption that the content and justification of appropriate principles are invariant across the differences of perspective between a theoretical and a practical context, let alone among situated subjects within such a context. That is not to say that criteria are necessarily posited as universally valid—the point holds also for contextualist theories, insofar as they construe the content and justification of principles as independent of their application, even if valid only for a particular context (see Chapter 6, Section 6.2). Judgment so conceived is impersonal and ahistorical, in the sense that it does not matter who judges, where, and when, so long as the judging subject has knowledge of the relevant state of affairs and valid principles. What is required for judging legitimacy is epistemic access to the correct facts and principles, not a concrete practical relation to the regime in question.

Finally, on this picture, the quality of judgments depends on the validity of the norms, the truth of the facts, and a correct subsumption of the latter under the former. Good judgment consists in a certain facility with theoretical knowledge. In other words, judging well is understood in terms of getting the propositional content right. Once we have resolved the question of correct criteria and have gathered the facts, all that's left to do is to "apply" this knowledge. While every good Kantian knows that that apparent ease is deceptive, there appears to be little more that can be said about it theoretically.

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[33] Likewise, Miriam Ronzoni argues for the "incorporation of judgment within the constructivist procedure that is meant to deliver normative principles." Rawls, *A Theory of Justice*; Ronzoni, "Constructivism and Practical Reason," 76.

Perhaps not every normativist theorist of legitimacy would endorse all aspects of this picture, if asked. Still, unless they provide an alternative view of what judging involves, it is reasonable to treat them as implicitly committed to this view of judgment and its presuppositions. If you think that the question of legitimacy is a practical problem that political subjects face in real-life situations, and that a theory of legitimacy is supposed to respond in some way to this predicament, *and* if that theory is essentially concerned with identifying the correct criteria, then apparently judging legitimacy in practice amounts to nothing more than somehow bringing such a theory to bear on particular cases.[34] Normativism (as a task description for a theory of legitimacy) and this conception of judgment (as norm application) belong together by default.[35] Of course, one could maintain that a theory of legitimacy need not be practical in this way, and argue that moral principles captured by a theory of legitimacy may articulate meaningful moral truths, even if they do not immediately issue practical judgments. But it is hard to see what "political legitimacy" means, or what philosophical problem it names, in abstraction from a political predicament that subjects encounter in practice.[36]

1.4 Political realism as a form of normativism

Political realists reject what they call "ethics-first" approaches to political theory and the "priority of morality to politics," denying that we can treat morality as the given starting point for political thinking.[37] A preoccupation with moral knowledge comes at the cost of understanding political phenomena. However, realists' opposition to moralism does not automatically translate into an alternative to normativism. Indeed, recent proposals

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[34] Arthur Applbaum's recent view fits this mold perfectly. He takes it that "we should take questions about political legitimacy to be primarily practical queries about what to do, rather than theoretical queries about what to believe," and his aim is to establish, by moral argument, the correct answers to such questions. Applbaum, *Legitimacy*, 142.

[35] David Copp explicit defends the view that normative judgment is a matter of applying a given standards, albeit in a different context from his view of legitimacy. Copp, *Morality, Normativity, and Society*; Copp, "The Idea of a Legitimate State."

[36] David Estlund, for example, has argued that a theory of legitimacy could still describe the moral truth about a regime, even if people cannot bring themselves to recognize it. Estlund, "Utopophobia." However, our question here is not about people's motivations for adopting certain principles, but whether judging legitimacy appropriately is well understood as a matter of applying principles.

[37] Geuss, *Philosophy and Real Politics*; Williams, *In the Beginning Was the Deed*. See also Hall and Sleat, "Ethics, Morality and the Case for Realist Political Theory."

for rethinking political legitimacy under the banner of realism typically exhibit essentially the same picture of what a theory of legitimacy is supposed to provide, except that they hold that the principles must be distinctively political in character. Much debate concerns what exactly makes norms "moral" or "political," but the details do not concern us here.[38] The key point is that realists have tried to specify "more realistic criteria for legitimacy."[39] For some realists, a standard is taken to be more realistic if it sets a low bar, which is relatively easily met by a regime.[40] For others, criteria must be sensitive to the historical context.[41] Yet another view is that relevant criteria must have their source "within" politics rather than "outside" it, for instance, by referring to the point and purpose of the political practice at stake.[42]

Insofar as these are the terms in which they frame the question of legitimacy, realists do not fundamentally call normativism into question (see Figure 1.2).[43] Theorizing legitimacy is still conceived as a normative codification project. The scope of the salient criteria may be understood to be rather narrow, or the bar may be set rather low, but the task of political philosophy remains to discover a distinctive form of theoretical knowledge—the content and justification of principles and criteria, however context-dependent. There is no reason in principle, I think, why a realist should find this job description particularly attractive, given the rejection of moralism and an orientation toward political understanding—unless one simply takes for granted a view of judgment as a matter of applying given standards to the facts at hand.[44] Indeed, Glen Newey regarded such a normative approach to political philosophy as "unduly narrow and [having] a constricted sense of its possibilities."[45]

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[38] See Erman and Möller, "Political Legitimacy in the Real Normative World"; Leader Maynard and Worsnip, "Is There a Distinctively Political Normativity?"; Jubb, "On What a Distinctively Political Normativity Is"; Sleat, "Realism and Political Normativity."

[39] Sleat, "Legitimacy in Realist Thought," 315. Hence, John Horton's suspicion is apropos: To what extent does the realist project really differ from that from which it sets itself apart? Horton, "Realism, Liberal Moralism and a Political Theory of Modus Vivendi," 445–46.

[40] Horton, "Realism, Liberal Moralism and a Political Theory of Modus Vivendi."

[41] Williams, *In the Beginning Was the Deed*.

[42] Rossi, "Justice, Legitimacy and (Normative) Authority for Political Realists"; Cozzaglio and Greene, "Can Power Be Self-Legitimating?"

[43] For critical discussion of these proposals, see Erman and Möller, "Political Legitimacy for Our World"; Wendt, "On Realist Legitimacy."

[44] Thus, Ilaria Cozzaglio and Amanda Greene remain in the grip of the dichotomy between "normative" and "descriptive" enquiry when they suggest that "political realists need to identify principles of evaluation that go beyond a description of politics. Otherwise, the endeavor would be an exercise in empirical social science rather than a normative theory of politics." Cozzaglio and Greene, "Can Power Be Self-Legitimating?," 1017.
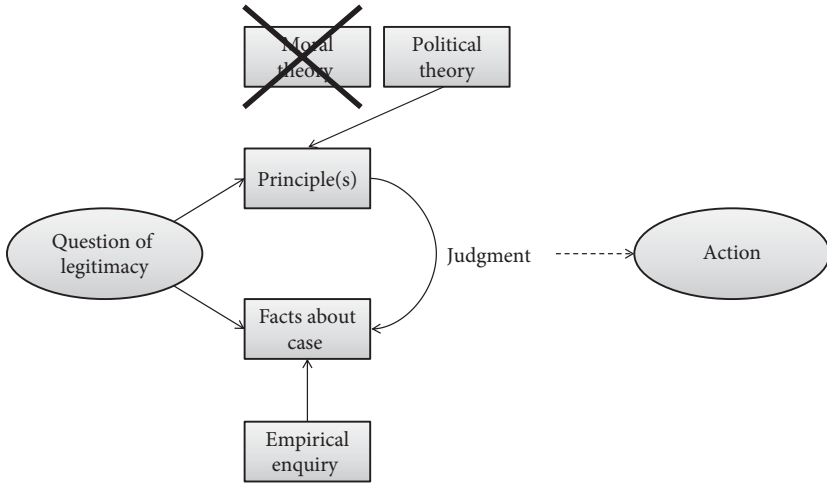
[45] Newey, *After Politics*, 34.

Figure 1.2 Realists' accounts of legitimacy leave intact the structure of the normativist view.

Still, while the realist literature does offer intimations of a more radical rethinking of political legitimacy, this has not been systematically pursued.

The reception of Bernard Williams's reflections on political legitimacy is instructive in this regard. In search of an alternative to moralistic conceptions of legitimacy, Williams insists that what matters crucially for legitimacy is whether rule "makes sense" to those subjected to it, where what makes sense is understood not from a moral standpoint that all must rationally accept, but in terms of their actual normative expectations. According to Williams, historically contingent circumstances have made it so that "liberalism," understood in some broad sense, informs what makes sense "now and around here," but that does not mean liberal principles should be elevated to the status of universally valid criteria that every regime ought to meet. What counts as an acceptable response to the question of legitimacy (or the "Basic Legitimation Demand," as Williams calls it) crucially depends on *who* is subjected (when and where), not in terms of their essential constitution as human beings, as rational agents, or as social animals, but in terms of who they contingently and first-personally *take* themselves to be, and the specific beliefs and expectations in relation to the regime that characterize them. Put differently, the question of legitimacy is first and foremost a question of what

one can live with, given the historically specific self-conception one finds oneself with.[46]

Williams did not flesh out the idea much further than this. Working out in more depth what "making sense" might mean in connection to the question of legitimacy could point in the direction of a different way of thinking about the problem (in fact, this would be a good way of describing the project of this book). But realists who draw on Williams have thus far been more concerned with whether Williams provides us with a nonmoralistic standard of legitimacy than with examining the activity of making sense.[47]

John Horton and Matt Sleat in particular have drawn on Williams to propose what they regard as realistic criteria of legitimacy. In their view, a regime is legitimate to the extent that the normative commitments embodied in the regime are "congruent" with the commitments (or beliefs, attitudes, and values) endorsed by those subjected to it—essentially the view we saw earlier in Beetham.[48] What does judging legitimacy consist in, on this view? Sleat is explicit about this: "Judgements about the legitimacy of a political order, or the use of political power, are assessments of the degree of congruence, or lack of it, between that order and the beliefs, values and normative expectations that its subjects have of political authority."[49] Of course, the governed are quite likely to disagree about that in struggles for legitimacy. But the criterion does not presuppose that there is a single, unambiguous answer to what subjects regard as legitimate. Sleat and Horton rather conclude from this that legitimacy is a matter of degree, and that a regime is never perfectly legitimate. Getting a sense of the views that predominate in a particular context (and thus of the standards that the regime should meet) is a difficult

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[46] The "first political question" is not therefore, as Williams seems to suggest, a matter of establishing order and stability but of asking what kind of order one can live with. See Fossen, "Modus Vivendi Beyond the Social Contract."

[47] For example, Bavister-Gould, "Bernard Williams," 594; Cozzaglio and Greene, "Can Power Be Self-Legitimating?" Whether Williams would go along with this is questionable. Edward Hall plausibly suggests that "the primary purpose of Williams' account is not to provide an alternative (albeit minimal) set of principles that ground a state's right to rule, but to enable us to understand the nature of politics itself." Hall, "Bernard Williams and the Basic Legitimation Demand: A Defence," 469.

[48] Horton, "Realism, Liberal Moralism and a Political Theory of Modus Vivendi," 141: "Fundamentally, it is about the acknowledgement of state as having authority . . . in terms that are taken to be salient within the context in which such authority is exercised and affirmed." Sleat, "Legitimacy in Realist Thought," 325: "What matters is that the political order makes sense as a form of legitimate authority in relation to the beliefs (moral, political, social, economic, etc.) of those who are subject to it, that it conforms to people's values and standards, and that it meets the normative expectations that we have of it."

[49] Sleat, "Legitimacy in Realist Thought," 326.

interpretative exercise and there is no presumption that any resulting inter-
pretation will be without remainder.

The congruence principle is obviously highly sensitive to the contingent
ways in which subjects think of themselves and their political situation. In
this way, Horton and Sleat mean to avoid treating morality as a given prior
to politics, while nonetheless gaining some critical purchase on regimes,
although that critical purchase must be worked out in concrete cases in a
manner that is highly contextual. Still, this does not fundamentally alter
the normativist picture. The content of judgments of legitimacy that result
from applying the congruence principle is highly sensitive to context since
the principle makes reference to the beliefs and values of those subjected to
power. But the form of judgment remains impersonal and ahistorical: it does
not matter who does the judging, where and when, as long as one has norma-
tive knowledge the correct standard (congruence, on this proposal) and ep-
istemic access to the facts at hand (the views of the subjected and the actions
of the regime).

Aside from this structural similarity to the moralist views it seeks to avoid,
the congruence view faces the same problem that we encountered when
discussing Beetham: it abstracts from the practical point of view. It would be
odd to say that people take different views about the legitimacy of a regime
because they disagree about which beliefs and values are prevalent in society,
rather than because *they themselves hold* different beliefs and values. From a
practical standpoint, making a legitimacy claim involves committing one-
self, taking a stance toward the regime. Measuring congruence involves just
the opposite: to avoid bias and distortion, one must bracket one's own nor-
mative expectations and substitute those of the governed. Taking a practical
stance toward a regime and measuring congruence involve very different
ways of relating to oneself and to others. Confusion is bound to result.

In short, recent realist accounts of legitimacy still cast judgment as a mo-
ment of decision in which theoretically articulated norms are brought to bear
on the given facts of a particular situation. Such theories all make the same
move of abstraction, a move astutely diagnosed by Raymond Geuss: they ab-
stract the propositional content of political judgments from the practical sit-
uation that calls them forth—with its characteristic historical background,
relations of power, and plurality of agents:

> It is not false to think of a political judgment as a belief, but it is an abstrac-
> tion, an artificial isolation of one element or component or aspect from a

wider nexus of actions and action-related attitudes, habits, and institutional arrangements, within which alone the judgment (finally) makes sense.[50]

As a characterization of normativism, whether moralist or realist, this is spot on. And it points in the direction of a different way of thinking about legitimacy, perhaps more true to the realist spirit, which tries to comprehend judging legitimacy as a situated activity.[51]

1.5 Principles of legitimacy in Rawls and Habermas

Nothing I have said refutes the normativist picture of judgment and the concomitant task description for a theory of legitimacy as a codification project. Its limitations will become much clearer in Part II. In this chapter, I merely want to point out the prevalence of this way of approaching political legitimacy and to show that what is often taken for granted is, in fact, a contentious framing of the problem. One way to call its apparent self-evidence into question is to take a closer look at the principles of legitimacy offered by two giants of twentieth-century political philosophy: John Rawls and Jürgen Habermas. While they are often considered prime exponents of moralism and figure as the butt of realist critiques, that framing of their position in the landscape obscures both the distinctiveness and the limitations of their work in connection with political legitimacy. Engaging with Rawls and Habermas will help us to open up a different set of questions for a theory of political legitimacy to answer. It will also help to counter the perception that all attempts to articulate principles are by definition a quest for knowledge to solve the question of legitimacy.

In my view, Rawls and Habermas operate with a more complex understanding of what judging political legitimacy involves, but this view remains largely implicit in their work. Contrary to how it may appear, neither Rawls nor Habermas purports to offer a philosophical solution to the question of legitimacy, as staged at the outset—the question of how to relate practically to the regime with which one finds oneself confronted. Although they undeniably proffer normative standards of legitimacy, these principles do not purport to govern our basic stance toward a regime, but rather to provide

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[50] Geuss, "Political Judgment in Its Historical Context," 8.
[51] For another realist take on judgment, though not in the context of a theory of legitimacy, see Philp, "What Is to Be Done?"; Bourke, "Theory and Practice."

immanent criteria for evaluating institutions, laws, or decisions in the context of a specific form of regime. With regard to the legitimacy of the regime as such, these principles are expressive rather than adjudicative: against the background of a constitutional-democratic regime, they claim to express what it would mean for that regime to live up to its own expectations, and ours, qua citizens.

To see this, it is crucial to recognize that the problems at the heart of Rawls's and Habermas's political theories are subtly but importantly different from the question of legitimacy as considered here. The aim of Rawls's theory of justice as fairness—at least as presented in *Political Liberalism*—is to spell out the fair terms of cooperation among free and equal citizens, by articulating a set of principles that all citizens can reasonably accept despite profound disagreements, and that they can use to evaluate institutions and guide reforms. Habermas's project in his most systematic political work, *Between Facts and Norms*, is to explicate the normative core of constitutional democracy. This similarly provides a critical standard for evaluating the democratic credentials of political processes and a horizon for their improvement.

Habermas and (more tangentially) Rawls frame this as a matter of legitimacy, and each articulates a principle to address it. But one has to consider carefully the questions to which these principles of legitimacy are meant to respond. Rawls and Habermas do not ask, as moralists do, in the abstract "what renders political authority morally acceptable?"[52] The point of these criteria is not to provide a criterion that enables one to determine whether a regime as such is legitimate or illegitimate, but to articulate what it means to see ourselves as free and equal citizens in the context of a constitutional democratic regime. *Given* that we find ourselves in a certain kind of regime (constitutional democracy), how is power properly exercised, or law legitimately made? Their principles express the liberal (Rawls) or democratic (Habermas) legitimacy of laws, policies, or institutions against the background of a constitutional democratic regime, the fundamental legitimacy of which is already granted once we get to consider these principles. A theory of *liberal* or *democratic* legitimacy is not *eo ipso* a theory of *political* legitimacy in the sense that concerns us here.[53]

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[52] Cf. Sleat, "Coercing Non-Liberal Persons: Considerations on a More Realistic Liberalism," 351.

[53] *Pace* Christopher Meckstroth, who offers a sophisticated theory of what is involved in judging when a law or a reform appropriately counts as *democratic*, but not as such, I think, an account of judging *political* legitimacy. See Meckstroth, *The Struggle for Democracy: Paradoxes of Progress and the Politics of Change*.

Habermas's democratic principle says that "only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted."[54] He notes immediately that the principle "explains the performative meaning of the practice of self-determination on the part of legal consociates who recognize one another as free and equal members of an association they have joined voluntarily."[55] In other words, the principle articulates the meaning of a practice from the standpoint of its participants; it does not explain the legitimacy of that practice to those unwilling or unable to see themselves as such.[56]

Similarly, Rawls takes himself to be interpreting in a coherent and systematic way the basic moral and political commitments that he claims to find "implicit in the public political culture of a democratic society," that is to say, in "the political institutions of a constitutional regime and the public traditions of their interpretation. . . , as well as historic texts and documents that are common knowledge."[57] In this context, Rawls formulates the "liberal principle of legitimacy" thus: "Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason."[58]

The posture that Rawls and Habermas adopt, and invite the reader to take as well, is that of a fellow democratic citizen. They appeal not to the truth of some moral doctrine but only to an immanent account of what that posture entails. It follows that the act applying these principles is neither impersonal nor ahistorical; it makes sense only from the standpoint of a citizen. As Anthony Laden has put this point, for both thinkers "doing political philosophy within and for a democratic society requires abandoning the perspective of the theorist favored by utilitarians and many other political philosophers

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[54] Habermas, *Between Facts and Norms*, 110.

[55] Habermas, 110.

[56] A more in-depth analysis of Habermas's theory of legitimacy can be found in Fossen, "Judgment and Imagination in Habermas' Theory of Law."

[57] Rawls, *Political Liberalism*, 13–14.

[58] Rawls, 137. For an illuminating in-depth reconstruction of Rawls's changing views of political legitimacy, see Langvatn, "Rawls on Political Legitimacy." Silje Langvatn observes (among other things) that, while Rawls's understanding of political legitimacy shifts throughout his career, he always tries to account for it against the background of a constitutional democratic regime (p. 136).

and adopting the perspective of the citizen."[59] Nuanced differences between them aside, Rawls and Habermas share this basic orientation of political thinking.

The upshot is that in these theories the role of principles of legitimacy with respect to the political order as such (as opposed to particular institutions, laws, or decisions within that order) is *expressive* rather than adjudicative. If the question of legitimacy, at bottom, is how to relate practically to the regime with which one finds oneself confronted, here that question is recast more narrowly and specifically in terms of how to relate *as free and equal citizens* to each other and to the practice of *collective self-government* in which we, in their view, find ourselves engaged. Rawls's and Habermas's principles of legitimacy do not explicitly address the question of legitimacy at a deeper level than this. They do not feel a need to, I think, in large part because they assume that doing so could only involve an appeal to moral truth, and they recognize that politically we cannot treat morality as given.[60] But the question of legitimacy does cut deeper, for nothing guarantees—certainly not the principles proposed by Habermas and Rawls (as they would acknowledge)—that the presuppositions of this starting point cannot be called into question, both philosophically and politically. Insofar as a principle is expressive of what legitimacy requires within a particular type of order, it cannot determine the legitimacy of that order as such.

If one wants to think through the question of legitimacy, the problem with Habermas and Rawls is that their accounts of legitimacy bear on the issue in a way that is too dependent on the context of a constitutional democratic regime, and therefore fails to get to the bottom of the political problem. It is one thing to proceed theoretically from the stance of a citizen qua self-governing citizen, and another from that of a perplexed subject trying to grasp what is going on. More pertinently, these accounts do not speak at all to those not so

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[59] Laden, "Taking the Distinction between Persons Seriously," 289. For related interpretations of Rawls's approach to political philosophy, to which I am indebted, see James, "Constructing Justice for Existing Practice"; Gledhill, "Rawls and Realism"; Jubb, "Playing Kant at the Court of King Arthur."

[60] Rawls may be taken to espouse a moralized principle of legitimacy in his discussion of civil disobedience and the natural duty to support more or less (but not fully) just institutions. Rawls, *A Theory of Justice*, 293ff. The most Habermas provides in response to this issue is this consideration: "Philosophy makes unnecessary work for itself when it seeks to demonstrate that it is not simply functionally recommended but also morally required that we organize our common life by means of positive law, and thus that we form legal communities. The philosopher should be satisfied with the insight that in complex societies, law is the only medium in which it is possible reliably to establish morally obligated relationships of mutual respect even among strangers." Habermas, *Between Facts and Norms*, 460. Karl-Otto Apel challenges Habermas on precisely this point in "Regarding the Relationship of Morality, Law and Democracy."

fortunate as to find themselves able to adopt this posture to begin with. The point here is not to demand a more fundamental principle of legitimacy, but to ask for an adequate diagnosis of the problem that Rawls and Habermas leave implicit.

1.6   Toward a pragmatist approach to political legitimacy

What could a non-normativistic approach to political legitimacy look like? None of the approaches discussed so far offers an explicit and systematic account of what is involved in judging the legitimacy of a regime from a practical standpoint, and what is involved in doing that well. Raising this question opens room for a different mode of engaging philosophically with the question of legitimacy, which we could label "pragmatist."[61] As I see it, the distinctiveness of a pragmatist approach lies in reversing the direction of enquiry. Instead of treating judgment as an afterthought, we make it our central theoretical concern. Instead of starting by determining the content and justification of principles, and then enquiring how those principles might be applied in practice, a pragmatist approach starts by accounting for the activity of judging legitimacy. It inquires what it is we are doing in asking whether a regime is legitimate or not, seeking to make explicit how the question of legitimacy presents itself and engages us in practice. What are the conditions in which this predicament presents itself as a real-life, practical problem? What must one know, and what can one do, in order to distinguish whether the authorities with which one finds oneself confronted are legitimate, or merely purport to be so?

We can get a preliminary sense of what this could mean concretely by extending our examination of Rawls and Habermas. The previous section suggested that those who are in a position to apply their principles of legitimacy have already adopted a citizen standpoint and take the basic legitimacy of constitutional democracy for granted. This presumes that much political work has already been achieved. Insofar as the legitimacy of the regime as such is concerned, judgment has to a considerable degree already happened before these liberal democratic principles enter the picture. But if we are

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[61] Alternative labels could work just as well. The approach I am sketching is akin to what Hans Sluga proposes to call a 'diagnostic practice' and John Horton 'interpretive realism.' Sluga, *Politics and the Search for the Common Good*; Horton, "What Might It Mean for Political Theory to Be More 'Realistic'?"; cf. Prinz, "Realism and Real Politics."

interested in rethinking what judging legitimacy involves, this could offer a clue. Perhaps, in putting forward these principles, Rawls and Habermas enact a different mode of engaging with the question of legitimacy, one which reveals, by showing rather than telling, something of what is involved in judging legitimacy. What sort of activity or activities are they engaging in, in proffering their principles?

Consider more closely the passage that leads up to Rawls's formulation of the liberal principle of legitimacy:

> The background of this question [about the legitimacy of the constitution in a democratic regime—TF] is that, as always, we view citizens as reasonable and rational, as well as free and equal, and we also view the diversity of reasonable religious, philosophical, and moral doctrines found in democratic societies as a permanent feature of their public culture. Granting this, and seeing political power as the power of citizens as a collective body, we ask: when is that power appropriately exercised? That is, in the light of what principles and ideals must we, as free and equal citizens, be able to view ourselves as exercising that power if our exercise of it is to be justifiable to other citizens and to respect their being reasonable and rational?[62]

This is the question to which the liberal principle of legitimacy responds. Notice how much work is required to set the stage: we are asked to view others and ourselves *as* free and equal citizens; to see political power *as* "the power of citizens as a collective body"; and to regard diversity—the "fact of reasonable pluralism"—as a permanent fixture of our historically given situation.[63] Only then can we see the problem as Rawls does (namely: How is fair cooperation possible despite profound disagreement?), and can the liberal principle of legitimacy enter the scene to help address it.

This specific framing, much more than the liberal principle itself, is where we see Rawls's response to the question of legitimacy. Rawls deliberately represents power in a specific way, expresses a sense of who we are, and offers us a historically situated sense of our present. Crucially, though, this framing

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[62] Rawls, *Political Liberalism*, 136–37.

[63] "History tells of a plurality of not unreasonable comprehensive doctrines" Rawls, *Political Liberalism*, 140. Jan-Werner Müller argues: "In his work Rawls often asks us to conceive of citizens as legislators or as judges. Yet . . . in an important sense, they also have to be (at least amateur) historians and carriers of liberal memory." Müller, "Rawls, Historian," 336.

is not rendered thematic by Rawls as part and parcel to his account of legitimacy, but is presented as *prior* to it.

It would not be right exactly to say that Rawls and Habermas simply take for granted that the addressees of their theories are already willing and able to see themselves as citizens engaged in collective self-rule, even though the criteria they offer have their point only insofar as they do. That would miss the hortative dimension of their theorizing. They adopt the standpoint of a self-governing citizen not because they are sure that constitutional democracy has already been achieved, but because they believe it can only be realized if we collectively take up the standpoint they exhibit—however imperfectly the regime may presently live up to its ideals. I have argued elsewhere that implicit in the performative upshot of Habermas's theory of democratic legitimacy is a view of judgment as a practice of world building, a view that is otherwise associated much more with Hannah Arendt.[64] Habermas can be understood as inviting us to imagine our political world in such a way that, if we accept his invitation, we keep alive the promise of democratic self-government. "Rational reconstruction" in this context means re-*construction* as much as *re*-construction.[65]

Something similar can be said of Rawls. By showing that *if* we bring ourselves to see each other as free and equal citizens of a constitutional democracy, *then* there is a coherent way of addressing our political problems fairly, Rawls invites us to indeed conceive of ourselves thus.[66] Performatively, theorizing from the citizen standpoint can be understood not just as a defensive move—renouncing the philosopher-king's throne and ceding the moral high ground—but also as offensive. It encourages those who are reluctant to see themselves as self-governing citizens to overcome their scruples and enter the forum.

The key point, for now, is this. As we have seen, three acts of stage setting precede Rawls's formulation of the liberal principle of legitimacy: Rawls

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[64] For the latter, see Zerilli, *A Democratic Theory of Judgment*.

[65] Fossen, "Judgment and Imagination in Habermas' Theory of Law."

[66] As Laden makes this point: "Very roughly, citizens in a pluralistic society might come to doubt whether a constitutional democratic regime is possible given that citizens can not be brought to agree on fundamental matters without the use of oppressive force. Faced with such a crisis of faith, we may find ourselves unable to muster the commitments and efforts at compromise and self-sacrifice necessary to make such a pluralistic democracy work. So this lack of faith is a political, not merely a philosophical, problem. Nevertheless, a large part of its solution lies within the conceptual domain of philosophy, insofar as our faith can be restored by a philosophical demonstration of the conceptual coherence of a pluralistic democracy. Rawls describes this role for philosophy as 'philosophy as defense.' " Laden, "Taking the Distinction between Persons Seriously," 292.

invites his readers to see themselves as a body of free and equal citizens, and to view the regime with which they find themselves confronted as an expression of their own, collectively shared power. And he situates this in a narrative according to which pluralism is the inescapable historical condition in which we find ourselves. If my interpretation of the intended performative upshot of his theorizing is correct, then Rawls is here not merely stating what he takes as uncontroversial assumptions we (his readers) must already share. Rather, these acts of stage setting are political acts that we are asked to carry through, and our willingness or refusal to do so shapes our stance toward the regime.

Now, what if we think of these acts of stage setting as acts of judgment? Perhaps it is precisely these kinds of political activity that constitute what judging the legitimacy of a regime consists in. That would mean that, in making these remarks, Rawls is not just setting the stage, preparing the ground for a moment of judgment in which a principle is applied. These apparently antecedent moments would, in fact, be at the heart of judgment. One's grasp of who one is in relation to the authorities, what the regime is like, and one's sense of history—these are not given prior to judgment, but at stake in it (see Figure 1.3).

This opens up new terrain for a theory of political legitimacy. The question of legitimacy would then not appear as a problem that calls for theoretical solution, but for philosophical explication and practical engagement. Theorists of legitimacy have not so far provided a systematic account of how and why the activities in which Rawls engages here—portraying power, articulating
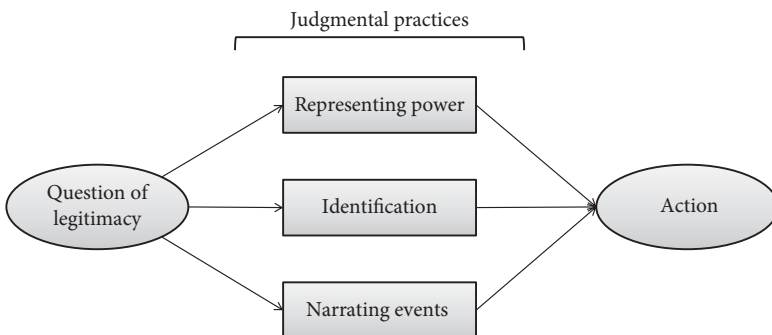

Figure 1.3 Provisional sketch of a picture of judgment as a set of world-shaping activities. Rawls's acts of stage setting are here regarded as constitutive dimensions of judgment.

identity, and narrating history—bear on the question of legitimacy, and what is involved in performing them in better and worse ways. The question is not just what one ought to know, but also what one can do to address the question of legitimacy aptly. The challenge of explicating such forms of activity does not appear on the horizon of a theory of legitimacy if one frames the task for such a theory from the very start as a quest for knowledge of normative principles.

How much room would such a practice-oriented approach to legitimacy leave for traditional normative theories? To what extent do the activities that constitute judgment afford or resist normative codification? Would pragmatism just make explicit what normativist theories of legitimacy are already doing? Or, would it have revisionary implications, bringing out unacknowledged limitations of such theories and new possibilities for thinking about the problem? The answers really depend on further investigation—on a concrete philosophical account of the practical encounter between subject and authority.

2

Rethinking Legitimacy

2.1 Introduction

"[E]very system of rule attempts to establish and to cultivate the belief in its legitimacy," Max Weber famously stated.[1] Rephrasing slightly, we might say that authorities make a claim of legitimacy, and encourage and expect their subjects to recognize that claim. But what is it that is being claimed, or that authorities want us to believe in? What is it for a regime to really *be* legitimate, as opposed to merely purporting to be so, or being taken as such? In short: What is political legitimacy?

How might one approach this question? Let me start by schematically distinguishing two broad strategies for developing a philosophical account of some concept.[2] One approach begins with the assumption that there is a phenomenon in the world that the concept is supposed to refer to, and tries to articulate the necessary and sufficient conditions for something to be that, rather than something else. One can then use that account to explain how the concept is used correctly in practice. Call this a metaphysical approach because it aims to identify the content of the concept—what it means, understood (on this approach) in terms of its correspondence to some given object—and deploys that to explain its use.

A pragmatic approach inverts the direction of enquiry: it tries to account for the meaning of a concept on the basis of its practical use. Starting from the observation that the concept at issue is deployed and disputed in practice, it tries to articulate what the phenomenon in question is on the basis of an account of what one does in *taking* something as such and *claiming*

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[1] Weber, *Economy and Society*, 1:213.

[2] My distinction between these strategies roughly follows the characterizations proposed in slightly different terms by Mark Lance and Heath White and by Joel Anderson. Lance and White say that metaphysical approach (to personhood) "begins by asking what a person, or agent, or subject is, perhaps by attempting to supply necessary and sufficient conditions." In contrast, on a "neo-pragmatist" approach, as Anderson puts it, "the analysis of the concept makes essential reference to a way in which individuals engage with each other from a second-personal standpoint." Lance and White, "Stereoscopic Vision," 2–4; Anderson, "Disputing Autonomy," 18.

that it is so. On the pragmatist assumption (associated especially with the later Wittgenstein) that the meaning of a concept can be understood in terms of its use, it makes sense to try to derive a definition of a concept (what it means) from an account of the role the concept plays in practice. In this way, one avoids having to make prior assumptions about the essential features of the phenomenon in question.

Philosophical theories of political legitimacy usually operate in the metaphysical mode. They answer the question of what it means for a regime to be legitimate by proposing a definition of political legitimacy as, say, "the right to rule." This right is then interpreted as a moral (or otherwise normative) property that political authorities have or lack in relation to their subjects.[3] For a regime to truly be legitimate is for it to satisfy the necessary and sufficient conditions for having this right. Taking something *as* legitimate is then a matter of believing, correctly or incorrectly, that it has this property, and the correctness of such a belief would depend on there being a fact of the matter to which this belief corresponds. This approach is metaphysical in the sense that our understanding of what it is to take or treat something as legitimate is dependent on a prior understanding of the nature of legitimacy as a distinctive moral property, and we can explain what makes such judgments correct if we know the necessary and sufficient conditions for the property to exist.

Notice what this framing commits us to and where it draws our attention. The key philosophical issues appear to be, first, to find the "sources" or "grounds" of legitimacy, to explain what "makes" a regime legitimate; and, second, to identify its practical implications—for example, whether or not its existence entails a duty to obey on the part of subjects.[4] Once we know these things, we can presumably apply this knowledge to recognize in concrete cases whether a regime is legitimate or not, and whether its subjects are bound to obey. So this framing naturally leads us to see a theory of legitimacy as a codification project (Chapter 1). Moreover, such an account of what it means to be legitimate (as possession of a property) makes no reference to any standpoint from which legitimacy is judged. It draws attention away

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[3] Arthur Applbaum stresses that legitimacy is a "a relational property that characterizes the normative connections among rulers, enforcers, subjects, and intervenors, rather than a monadic property, an attribute that something can have on its own, the way that a particle has the property of mass." Applbaum, *Legitimacy*, 142–43.

[4] As Fabienne Peter recently expressed this common sense in the literature: "A conception of political legitimacy offers an account of the conditions that must be met for political decisions to have the property of legitimacy. . . . The question, then, is this: in virtue of what do some political decisions have the normative property of legitimacy?" Peter, "The Grounds of Political Legitimacy," 373.

from the ways in which it is practically attributed and disputed. The apparent assumption is either that those moral conditions are independent of anyone's perspective, or that the perspective is one that we (the addressees of the theory) can be assumed to already share and therefore needs no mentioning.

Yet morality is deeply contested territory, both as to its nature and its content. It is not at all evident what a moral property is, whether there are any, and how they can be known. Our grasp of the problem of political legitimacy thus becomes hostage to moral philosophy. To avoid such controversies, Weber wanted social scientists to abstract from the truth of beliefs in legitimacy and focus just on describing and explaining what people think and do from the standpoint of an observer (as we have seen in Chapter 1). But that is, in effect, to give up on the ambition of illuminating how the question appears from a practical point of view. So it seems we are caught in a bind between normativism and descriptivism: we must either try to settle philosophically what *is* legitimate (*de jure*) by codifying normative standards, or otherwise abstain from examining legitimacy as a practical problem and just focus on what is *taken to be* legitimate (*de facto*).

In this chapter, I pursue a pragmatic strategy for conceptualizing political legitimacy. Legitimacy is a status that authorities claim for themselves, and that critics can deny them—and to figure out what legitimacy means we should explain what they are doing in claiming it. So we focus in the first instance not on what we say when we claim that authority is legitimate or illegitimate—on the content of legitimacy claims—but on what we do in claiming it—on their use. This makes conceptual room for thinking about political legitimacy in ways that do not simply take morality for granted and that keep differences of practical context and perspective in view from the start.[5]

Of course, a pragmatic approach has its own commitments, in this case drawing on a contestable view of language. Specifically, my attempt to explain what it means for something to be legitimate in terms of what one does in taking-something-as-legitimate exploits a basic insight of pragmatist philosophy of language: meaning should be understood in terms of use. Robert Brandom's notion of discursive practice as "deontic scorekeeping" gives us a theoretical vocabulary to articulate what it is to explicitly claim that

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[5] The analysis at this stage is not morally skeptical but agnostic. Morality is not essential to conceptualizing political legitimacy, but it can be brought into view at another stage, specifically in addressing, from a practical standpoint, the question of who one is (which is central to Chapter 5).

something is legitimate in term of what it is to implicitly take it to be so—and then to argue that this is all there is to what it means to be legitimate.[6] I will just assume this pragmatist view of meaning rather than defend it. But given the predominance of the metaphysical mode of conceptualizing political legitimacy just sketched, this at least enables us to approach the issue from a different angle.

The analysis proceeds in four steps. First, I propose a conception of politics. Because the term "legitimacy" has uses in a wide range of practices, political and otherwise, our first task is to provide a conception of the specific type of practical context that is at issue here: the encounter between subject and authority. I characterize politics as a practice of stance taking toward rule.

The second step is to explain what one does in explicitly claiming legitimacy in such a context. I'll suggest that to implicitly hold an authority to be legitimate is to take a particular kind of practical stance toward it, recognizing rather than rejecting its claim on one's obedience and allegiance. To take it to be illegitimate is to take a different stance, treating it as a mere imposition. We can then interpret the practical role of "legitimacy" as expressive: to call an authority legitimate or illegitimate is to make one's stance explicit, in dispute with others. On this account, when we call a regime legitimate (or illegitimate), we do not describe it or represent it as having a certain moral property. Rather, we engage it in some way, expressing a political stance toward it and toward others subjected to it.

The third step is to make sense of the difference between legitimacy *de jure* and *de facto*—what it means for something to *be* legitimate, as opposed to its merely being *taken* as such by others, or indeed by oneself. The key is to interpret this distinction in terms of the pragmatic differences of social perspective among participants engaged in stance taking, rather than in terms of the semantic relation of reference between legitimacy claims and a moral property. The distinction between something's being legitimate and its being merely taken as such arises, and only makes sense, from a practical point of view, and is brought into play by our practical taking-and-treating things *as*

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[6] Thus, my claim is *not* that one can infer "substantial normative conclusions" or "meta-normative constraints" for a theory of legitimacy from a theory of language, as Eva Erman and Niklas Möller suppose in their criticisms of my earlier formulations of these ideas. Brandom offers a compelling framework for a pragmatic approach to conceptualizing political legitimacy. His theory does not settle the content of such an account. Erman and Möller, "Brandom and Political Philosophy"; Erman and Möller, "What Not to Expect." For my detailed response, see Fossen, "Language and Legitimacy." The latest iteration of their critique still reads into my account arguments I am not trying to make. Erman and Möller, "Political Legitimacy and the Unreliability of Language." See also Prinz, "Principles, Practices and Disciplinary Power Struggles in Political Theory."

legitimate. Call it a "right to rule" if you will, but on this account that is not seen as a self-standing property that political authorities have or fail to have under certain independently specifiable conditions. Rather, it is a normative status that is attributed or withheld from concrete, embodied perspectives of political subjects taking stances toward a regime. It does not follow that such a property does not exist, only that we can make sense of the concept of legitimacy without positing it. Of course, this does not tell us whether to call a regime legitimate or illegitimate in concrete cases—that is a matter of judgment, and what that involves will occupy us for the remainder of the book.

The fourth and final step is to examine what sense can be made of attributions of legitimacy from an external point of view. I argue that there is a crucial asymmetry between the standpoint of a participant in political stance taking and that of an observer, arising from the difference between actually taking a political stance and having an opinion about it. An observer's attribution of "legitimacy" does not have the same pragmatic significance, and hence not the same meaning, as that of a participant because it does not involve the same kind of commitment on the part of the speaker.

2.2 Three scenarios

Let me give an initial sense of the practical predicament at issue by introducing three moments in which, in different ways, political legitimacy is at issue. These examples will recur later in the book.

"The people demand the fall of the regime," crowds chanted at Tahrir Square in Cairo in early 2011, as they did throughout North Africa and the Middle East. Simply in virtue of using social media, where calls for resistance were widely shared, or just partaking of the Cairo traffic, clogged even more than usual, many people found themselves confronted with fellow citizens who contested the regime, or with the regime's countermeasures. At this critical moment, many people faced a pressing practical question: Shall I go to the square to join the protests, try to ignore them, or perhaps express my loyalty to the regime in counterprotest?

In what sense was this a struggle for political legitimacy? The demonstrations that led to the fall of President Hosni Mubarak did not originate from nothing. The immediate spark for the uprisings that occurred all over the Arab world was the self-immolation of a Tunisian fruit seller, Mohamed Bouazizi, in December 2010. Bouazizi's wasn't the first such

tragic act, but the footage of his burning was shared with unprecedented speed and scope, turning local protests into a regionwide resistance movement.[7] In Egypt, the uprising was preceded by many smaller-scale protests during the last decade of Mubarak's rule. These were occasioned by various grievances, such as police abuse ("We are all Khaled Said"), the anticipated succession of Mubarak by his son Gamal (the Kefaya movement, "Enough"), and poor labor conditions and the suppression of protest (the April 6 Youth Movement). The massive demonstration of January 25, 2011, was organized by a coalition of these activists. They formulated a set of concrete demands, including new elections, a two-term limit on the presidency, an end to the state of emergency, and a minimum wage, among others. Mubarak's immediate departure was not one of these. Yet on the first day of protest, a crowd assembled at an office of the National Democratic Party (NDP) and cried: "illegitimate" and "Mubarak, your plane is waiting for you."[8] The popular slogan of the Tunisian uprising was quickly adopted by the Egyptians: "The people demand the fall of the regime."

What distinguished the 2011 uprising from earlier protests? One commentator called it a "tidal wave," the largest in a series of waves that finally broke the dam.[9] This metaphor clearly captures something important: protest was not a new phenomenon for this regime, which had withstood considerable popular pressure, although perhaps it had been weakened more than was apparent on the surface. But the image also misses a qualitative difference. The Tahrir Square protests did not just bundle and amplify demands that had been voiced all along. In contrast to earlier protests against police abuse, corruption, or labor conditions, the authorities themselves were now being called into question at a more fundamental level, as expressed by the demand for the regime to fall.[10] So we might say that a struggle against unjust treatment or problematic policies by itself is not overtly a struggle for political legitimacy. The former concerns how power is exercised and what for; the latter concerns who exercises power to begin with and what form that

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[7] Lim, "Framing Bouazizi."

[8] Khalil, *Liberation Square*, 144–45. For accounts of the uprising (scholarly, firsthand, or both), see also, for example: Lynch, *The Arab Uprising*; Ghonim, *Revolution 2.0*; Mehrez, *Translating Egypt's Revolution*; Gunning and Baron, *Why Occupy a Square?*

[9] Lynch, *The Arab Uprising*, 101.

[10] That is not to say that the legitimacy of the regime was never called into question before. For many activists, Mubarak's regime had long lost all credibility. But they did not typically overtly challenge the regime as such. Insofar as it was voiced publicly, disaffection with the regime focused on specific issues and demands. This may well have been for prudential reasons: it simply was too dangerous, as an isolated activist individual or organization, to question the regime to its face.

power takes. Of course, one might also call specific laws and actions legitimate or illegitimate. But it is the more fundamental sense of the legitimacy of the regime that concerns us here.

Another example of a situation in which the question of legitimacy was raised explicitly and forcefully for many people is the confrontation that began in the late 1960s between the establishment of the West German *Bundesrepublik* (Federal Republic) and a multifarious movement referred to as "the left."[11] In this case, people faced what was ostensibly a parliamentary democracy, rather than a thinly veiled authoritarian state. But because the radical left perceived the political establishment as implicated in global imperialism, impervious to demands for greater justice, and impenetrable by means of conventional party politics, many of them turned to extra-parliamentary forms of protest. For a small portion, most prominently the Red Army Faction (RAF), this involved violent action, including bank raids, bombings, and kidnappings. The government perceived this challenge as a threat to the republic's existence as a parliamentary democracy and deployed its police force, secret service, and military to seek out and imprison RAF members. It succeeded in capturing the core Baader-Meinhof group in 1972. But rather than putting an end to political violence, their imprisonment itself became the object of a struggle for a second and third generation of "urban guerrillas."

It is clear here, as in the previous case, that the struggle goes to the heart of the political order. The confrontation had ramifications not only for those actively engaged in the conflict, whether as a government official or a member of the resistance, but also raised dilemmas for many who were less overtly committed. The conflict dominated public debate in West Germany. Issues of contention involved, among other things, the allegedly inhumane treatment of the "terrorists" or "political prisoners," the extension of police prerogatives and reduction of legal protections, the banning of citizens with radical political ideas from public service, and the propriety of violence as a means of political action. For many, such issues prompted fundamental questions. Could the *Bundesrepublik* still be seen as the liberal democracy it purported to be, in view of the government's heavy-handed response? What did it mean for a person on the left to believe that "the killing of another individual is also

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[11] My account draws mainly on Aust, *The Baader-Meinhof Complex*; Kundnani, *Utopia or Auschwitz*; Pekelder, "From Militancy to Democracy?"; Varon, *Bringing the War Home*. For an incisive portrayal of West German political experience at the height of tensions in the autumn of 1977, see the film *Deutschland Im Herbst* by Alexander Kluge and a number of other directors.

a catastrophe for their own existence," and find oneself called on to harbor comrades who had gone underground?[12]

The turmoil and upheaval of the previous examples may give the impression that the question of legitimacy manifests itself only in revolutionary moments. Yet it can be raised also in times of "ordinary" politics, where a regime is well established and generally accepted. One further episode illustrates this.

On an overcast spring day in 2013, throngs of celebrating people filled the Dam Square in Amsterdam. Occasion for the festivities was the abdication of Queen Beatrix and the inauguration of her eldest son, Willem-Alexander, as the new king of the Netherlands. Above the swarms of inflatable orange crowns (the royal family is the House of Orange), red-white-and-blue fluffy hats, and other such royalist paraphernalia, a careful observer could at one point detect a piece of cardboard, held high, on which was written in black marker: "I am not an underling."[13] It was raised by a young woman called Joanna (she declined to go by her full name), though not for long, as she was promptly arrested by undercover police and removed from the square. She was released soon thereafter and the authorities issued a formal apology (and a bouquet of flowers).[14] That unlawful arrest, more than the protest itself, gave Joanna a moment in the national limelight. This was a repeat of a similar incident a couple of months before, when, at a birthday bash for the queen, Joanna was arrested (also unlawfully) by the police when she held up a makeshift placard, which read: "Away with the monarchy; it is 2013." By the time of the inauguration, the anti-monarchists had made this the hashtag for their campaign ("#Hetis2013").

Was this small note of dissent a contestation of political legitimacy? And does it touch on the heart of the political order? It seems not in this case. In terms of everyday decision making, the monarchy is a depoliticized and marginal feature of the Dutch political system, and the official role of the king is largely ceremonial. The monarchy is typically regarded as a harmless symbol of commonality, on par with the national football team. In fact, many supporters of the monarchy don't seem to take the monarchy all that seriously themselves either.[15] Many celebrators received the protesters

[12] The quotation is from left-wing academic and critic of the RAF Peter Brückner, quoted in Pekelder, "From Militancy to Democracy?," 324.

[13] I render the Dutch *onderdaan* as the somewhat arcane "underling" rather than "subject" because the latter sounds too neutral. *Onderdaan* strongly evokes the sense of having a master.

[14] According to the official story, the officers involved overstepped their protocol. Van der Laan, "Bestuurlijke Reactie Aanhoudingen Op de Dam."

[15] Margry, "Mobocracy and Monarchy."

with laughter or incredulity, and regarded them as attention-seeking party poopers, not as political dissenters. So in a way, it is already controversial to consider this protest as challenging the legitimacy of the monarchy, let alone the regime as such.

Yet this is precisely the view of the monarchy Joanna sought to challenge. From her perspective, the monarchy is not a negligible feature of the system. Neither its symbolic role nor its effective power should be underestimated. The king is formally head of the government. All legislation must bear his signature. Joanna's companion on the square carried a sign that read: "No monarchy but democracy," portraying as mutually exclusive what on the self-understanding of the Dutch political system is compatible: constitutional monarchy and parliamentary democracy. The hereditary privileges and economic power of the royal family are an "insult to democracy," Joanna remarked in an interview.[16] By having a king as its head, the state treats those it calls its citizens as underlings, and in that context, surrounded by people with orange face paint, "*I* am not an underling" can be read as a reproach of those around her as well: "*You* are acting like underlings." On this view, then, the monarchy compromises both the democratic credentials of the system, and the identity of its subjects as democratic citizens. At another occasion, she called it the "mask of the capitalist dictatorship."[17]

As this example shows, what looks from one angle like a contestation of the right to rule may from another have little political significance. The West German case bears this out, too: many government officials and citizens saw the RAF's political violence as a form of criminality rather than political action. Whether a conflict or disagreement is one in which political legitimacy is at stake is not always clear-cut, and this is often assessed differently from different perspectives.

2.3 Politics as stance taking toward rule: Subjecthood, power, and authority

Our task in this chapter is to explain the meaning of legitimacy claims in terms of the dynamics of political practice, without appealing to a prior understanding of what legitimacy is. To that end, we need a conception of

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[16] "Pauw & Witteman."
[17] SocialistTV, *Marxisme 2013 - Slotrally - Joanna*.

political practice, or at least of the specific form of political practice that concerns us here. Of course, the term "legitimacy" is used in various practices and in regard to various objects: from chess moves and children to election outcomes and humanitarian interventions. I have already steered in a certain direction by speaking of "regimes" and "authorities," but left deliberately vague what these terms refer to. So we should ask: What is *political* about the sense of political legitimacy at issue here?

On a metaphysical approach, one would answer this question by offering a definition of a certain kind of thing that the property of legitimacy attaches to, say, "the state," "the political system," "government," or "political decision"—in our case, it would be "regime" or "political authority." A statement that something is legitimate would then count as a claim of political legitimacy insofar as the object of evaluation is "political" in nature, irrespective of the context in which it is made. But I think this way of demarcating the political is problematic because it prejudges part of what is at issue in the question of legitimacy. As will become clear in Chapter 4, the nature of the object of legitimacy claims is itself at stake where legitimacy is politically in question. Did the left confront a "constitutional democracy" or a "military-industrial complex"? Was the Mubarak regime an "elected government" or a "gang of thugs"? Is the monarchy a harmless symbol of unity or the "mask of the capitalist dictatorship"?

On a pragmatic approach, we should specify the political not just in terms of what judgments of political legitimacy are *about*—their object of evaluation—but in terms of *where and how they occur*—their practical context, the form of practice in which legitimacy is claimed. Or, to put this slightly differently, we need an account of the practical problem that a theory of political legitimacy is supposed to speak to.

The notion of politics as stance taking locates the political at the nexus of order and conflict. If we simply equate politics with rule, then by definition we dismiss as apolitical or anti-political those forms of activity through which the given order is resisted or called into question. Likewise, it is one-sided to define politics exclusively in terms of exceptional moments of contestation, and rule out the normal, day-to-day operation of political institutions by definitional fiat.[18] I propose (taking a cue from Weber) that the type of practical

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[18] This point is well made by Bonnie Honig: "Politics consists of practices of settlement *and* unsettlement, of disruption *and* administration, of extraordinary events or foundings *and* mundane maintenances. It consists of the forces that decide undecidabilities *and* of those that resist those decisions at the same time. To reduce politics to only one side of each of these operations, to depoliticize the opposite side . . . is to displace politics, to deny the effects of power in some of life's arenas

situation in which the term "legitimacy" has a distinctively political significance revolves around the *attempt to rule* and the response on the part of those confronted with it. We all find ourselves in a constellation of power in which various agencies and institutions attempt to govern us: regulating our behavior, coercing compliance, settling conflicts, providing education, raising taxes, controlling borders, granting or withholding citizenship, profoundly shaping our lives and even our sense of self in manifold ways.[19] We inevitably comport ourselves toward those authorities in one way or another, whether by complying, actively supporting, resisting, or trying to evade them as much as possible. This encounter between subject and authority is our phenomenological point of departure, and the question of how to comport oneself in relation to it—what to do?—is the practical issue at stake.

In our order of explanation, the relation of rule is prior to the relata: what it is that makes the attempt ("authority") and whom the claim is made upon ("subject") remain open questions. Chapters 4 and 5 delve deeper into the issue of how to specify these notions. In this chapter, I will use [authority] and [subjects] in a technical sense: the brackets indicate that these terms are placeholders. The form that power takes and the identity of subjects remain to be characterized in concrete settings. For now, just note that the term [subject] here has the double sense of having a first-person practical perspective on the world, and of being subjected to the powers that be.[20] To be a political [subject] is to have a practical point of view in relation to a multiplicity of attempts to rule. It is also to find oneself among others; there is always a multiplicity of perspectives on the relationships involved. And for something to be an [authority] is for it to be the initiator of attempts to rule. This notion of [authority] should be taken in a descriptive sense; it does not already imply legitimacy.

To rule is to shape or alter the normative situation for those subjected. As such, an attempt to rule is a specific mode of exercising power. Following

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for the sake of the perceived goods that power stabilizes under the guise of knowledge, respect, rationality, cognition, nature, or the public-private distinction itself." Honig, *Political Theory and the Displacement of Politics*, 205.

[19] In situations of turmoil, one might find oneself confronted with multiple conflicting agencies purporting to rule and vying for supremacy. Here, the question becomes not whether *this* is legitimate or illegitimate, but which (if any) of the competing purported authorities is legitimate: the king or parliament? Tripoli or Bengazi? Cf. Meckstroth, *The Struggle for Democracy*, 137.

[20] This responds to Michel Foucault's observation that "[t]here are two meanings of the word 'subject': subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge." Foucault, "The Subject and Power," 331.

Michel Foucault, power can be understood as action upon the actions of others.[21] Relations of power shape or transform someone's practical horizon, their spectrum of possible and appropriate courses of action. We can distinguish two different ways in which someone can be ruled or governed. First, an [authority] can try to exercise power by prescribing or prohibiting courses of action, perhaps backed by sanctions. Someone purports to tell you what you may or may not do, and you feel bound or compelled to comply, whether because you take them to have a certain standing, or because of the consequences you expect if you do not. Second, power can be exercised by shaping your available courses of action in advance; for instance, by contributing to the constitution of your sense of identity or by affecting the material conditions of your agency. For example, by giving [subjects] the status of citizens and the right to vote, [authorities] open up legally constituted courses of political action and foreclose others; by structuring markets and redistributing capital, they allocate economic resources that, in turn, affect available courses of action; and by letting [subjects] undergo certain forms of education they inculcate certain habits and conventions and not others.

Only some of the relations of power in which we find ourselves are out in the open, operating in ways we are aware of. Our practical horizon can also be shaped by others in ways that operate subliminally or anonymously, behind our backs and perhaps unintentionally.[22] Once such modes of acting on our actions are rendered visible, they cannot continue to determine our actions in just the same way, since along with a first-person perspective on them also comes the possibility of a critical stance. Political authority, I propose, is represented power, power with a face, making a claim. To take something or someone as an authority is to see a multiplicity of attempts to rule as originating from the same source, to perceive a certain unity and logic

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[21] "[W]hat defines a relationship of power is that it is a mode of action which does not act directly and immediately on others. Instead, it acts upon their actions: an action upon an action, on existing actions or on those which may arise in the present or the future." Foucault, 789. See also Foucault, *History of Sexuality*, Vol. 1; Rouse, "Power/Knowledge."

[22] See, for example, Iris Young's notion of structural oppression. Young, "Five Faces of Oppression." I agree with Rainer Forst that "in characterizing a situation as an exercise of power, we do not merely give an empirical description of a state of affairs or a social relation; we also, and primarily, have to place it in the space of reasons, or the normative space of freedom and action." In other words, we take it as something that someone can be taken as responsible for. Forst, "Noumenal Power," 112. But contrary to Forst, I do not assume that all relations of power are recognized as such by those involved in them.

behind them, a certain consistency, a pattern, and a sense (perhaps unacknowledged) of responsibility.

The notion of a political stance reflects the idea that the encounter between [subject] and [authority] is, from either perspective, a *practical* context, in which they can treat each other in a range of different ways. While [authorities] attempt to rule their [subjects], they cannot fully determine how those subjects respond to this. The normative situation someone is in is always assessed differently from different situated perspectives. [Authority], in purporting to rule, adopts a certain stance toward [subjects], or makes a claim on them: from its perspective, the appropriate way for them to respond is to comply, or to endorse rather than subvert the power exercised over them. Thus, [authorities] treat their [subjects] as responsible in various ways. Where such a normative expectation is absent, we could speak of domination, or naked power, rather than authority.[23] Insofar as [subjects] do not respond in the manner called for, [authorities] deploy various means of control and coercion at their disposal to sanction non-compliance and minimize resistance.

Since rule takes the form of a claim, one can take two basic stances in response: recognizing or rejecting it. To recognize this claim is to treat it, on the whole, in accord with the status that it claims (one might quibble about details); to reject it is to treat it as an imposition. These stances are exhibited in action, in treating the authorities in one way or another, and they can be made explicit in discourse (as we'll discuss shortly). Where [authority] issues prescriptions or prohibitions, a [subject] can comply, or attempt to resist, ignore, or flee. Similarly, where [authority] constitutes the [subject's] practical horizon in advance, the [subject] can endorse the exercise of power or try to subvert or escape it. These basic stances can be manifested in a wide variety of actions—obeying the law or breaking it on occasion, turning out to vote, reporting suspicious activity, dodging the draft, supporting an underground newspaper, and organizing home schooling.

To avoid misunderstanding, it is important to emphasize that a stance is not the same as an opinion. *Pace* Weber (in our opening quote), taking-as-legitimate is not understood here in terms of *believing* in legitimacy or

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[23] Bernard Williams's example of the Spartans, who apparently regarded their slave class of Helots as enemies, is often mentioned. In such a situation, it seems, there can be no expectation of compliance based on a sense of responsibility, only on force. But typically, there is at least the semblance of a normative claim in relations of power—also in master-slave relations. Williams, *In the Beginning Was the Deed*, 5.

having an opinion about it. It is not primarily a doxastic but a practical attitude: recognizing or rejecting authority's claim to rule is a way of *acting* in relation to it; of comporting oneself.

Attributing a political stance to someone is a matter of interpreting the commitments that person takes themself to have, as embodied in their course of action. The notion of a stance is reducible neither to empirically observed "external" behavior nor to subjective "inner" attitudes. Not every act of compliance is an act of recognition; not every act of disobedience a rejection of the attempt to rule—as we saw in the previous section, the political significance of words and deeds is assessed differently from different points of view. Whether an act counts as an act of resistance, expressing a stance of rejection, or criminality or attention seeking is fundamentally an interpretative question, and to interpret the act one must situate it in an ongoing course of action. A "stance" is not a mental disposition, it is an interpretative category about the meaning of someone's course of action.

2.4 Deontic scorekeeping: A primer

Now that we have a rudimentary conception of politics as stance taking toward rule, the next move in our pragmatic order of explanation is to understand the concept of legitimacy in terms of the pragmatic role it plays within this type of situation—its function; what one does in deploying it. What is it to call [authority] "legitimate" in the context of stance taking toward rule?

The basic idea is simple. Stance taking is a matter of relating practically to rule and to concrete others, taking and treating them in certain ways rather than others. In doing so, one implicitly treats the regime as legitimate or illegitimate. Calling political authorities legitimate or illegitimate is a way of making one's political stance explicit: it is to *explicitly* recognize or reject [authority]'s rule in what one says, rather than implicitly in what one does. Doing so makes it possible to dispute these stances by giving and asking for reasons. Legitimacy is not a representational concept (referring to some property). To claim (il)legitimacy is not to communicate some state of affairs but to perform a political act that prompts people (including those in positions of authority) to shift their stances and reconsider their responsibilities in relation to the regime and to each other.[24] Rule (normatively) expects

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[24] One could call the concept "performative," but this should be treated with care. J. L. Austin

compliance and purports to be entitled to such compliance. This is the point of a legitimacy claim made on behalf of authorities. Suppose someone takes [authority's] claim to legitimacy to be sincere, but refuses to recognize it. It can then, depending on the circumstances, make sense to make your rejection of the regime explicit, in order to challenge the authorities to redeem their claim or change their ways, or to mobilize others to stand together and force such change.

Robert Brandom's "deontic scorekeeping" model of discursive practice provides a theoretical account of the relation between what is implicit in social practices (broadly understood) and what is explicit in linguistic claims, which enables us to elaborate this with greater precision. Brandom's theory is basically a systematic articulation of Wittgenstein's pragmatist idea that we should understand meaning in terms of use, or as Brandom has put it, "[S]emantics must answer to pragmatics."[25] For Brandom, social practices of all kinds are normative in that participants mutually hold one another responsible, taking-and-treating each other's words and deeds as appropriate or inappropriate in various ways. In his vocabulary, they keep track of the commitments and entitlements (to such commitments) that each of them undertakes and acknowledges. Commitment and entitlement are normative or deontic statuses: a commitment obliges or makes one responsible to do something in the eyes of the one attributing it, and an entitlement authorizes or licenses one to do something, again in the eyes of some scorekeeper (another participant, or an interpreter, or oneself). These statuses are the basic currency of social practice, and Brandom cashes out what it means to say and do, believe and intend things in terms of mutually holding one another to account by tracking one another's commitments and entitlements.[26] This does not mean that all social practices are to be understood with respect to explicit rules or principles; typically, this normativity is implicit in the ways participants treat each other, in the attitudes they adopt and the stances they take, in habits, institutions, ways of speaking, and so on. But

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originally used the notion of performativity to refer to speech acts that, in Quill Kukla and Mark Lance's words, "in their very utterance serve to enact, institute, or make true what they assert"; for example, when an official declares a couple to be married (Kukla and Lance, *"Yo!" and "Lo!,"* 87). In this sense, legitimacy claims are not performative: calling a regime legitimate does not make it so (cf. Pitkin, *Wittgenstein and Justice*, 280–82).

[25] Brandom, *Making It Explicit*, 83. I offer a more in-depth interpretation of Brandom's theory in Fossen, "Politicizing Brandom's Pragmatism."

[26] Brandom, *Making It Explicit*, 180–91.

deontic scorekeeping is a dynamic activity in the sense that participants not only keep track of one another's scores (in normal language: beliefs and their truth, intentions and their propriety), they also make these scores explicit by talking to each other. This is the point of *discursive* practice, what Brandom calls the "game of giving and asking for reasons": words and deeds have "pragmatic significance" (they *do* certain things) insofar as they alter the patterns of commitments and entitlements participants undertake and attribute.[27]

Deontic scorekeeping conjoins two key ideas: it offers an inferentialist semantics (theory of meaningful content) that is explained in terms of a social perspectival pragmatics (theory of use). Commitments are, as Brandom often says, "inferentially articulated": they hang together in a web that constitutes a "space of reasons." Inferentialism means that the content of a commitment (or a claim) consists in its rational connections to other commitments— what justifies it ("upstream") and what follows from it ("downstream"). For someone to be entitled to a commitment is for that commitment to be compatible with (licensed by) other commitments they have undertaken. Whether one ought to acknowledge commitment to something (i.e., believe or do something) depends on its compatibility with one's wider repertoire of commitments.

These relations of compatibility and incompatibility are instituted through social practices that have an essentially perspectival structure. By keeping "multiple sets of books," each participant distinguishes how things appear to themselves, and how they appear to others. They keep track of what others *take* themselves to be committed to in speaking and acting, in terms of the commitments they acknowledge, and what they *are* committed to, in light of the scorekeeper's own account of those commitments.[28] What anyone is really committed to, and whether they are entitled to those commitments, is negotiated among a multiplicity of perspectives in an ongoing open-ended process of action and response. There is no master scorecard; no privileged point of view according to which truth and appearance can be distinguished, or criteria formulated for distinguishing them. Brandom describes the practice of evaluating the truth of factual claims as a "messy retail business of assessing the comparative authority of competing evidential and inferential claims." The question of which claims are correct

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[27] Brandom, 166.
[28] Brandom, 488, 590.

is adjudicated differently from different points of view, and although these are not all of equal worth there is no bird's-eye view above the fray of competing claims from which those that deserve to prevail can be identified nor from which even necessary and sufficient conditions for such deserts can be formulated. The status of any such principles as probative is always itself at issue in the same way as the status of any particular factual claim.[29]

This passage nicely captures Brandom's non-foundationalism, which holds for normative as well as factual claims: the absence of a sovereign standpoint means that any claim to validity, as well any criterion for evaluating claims, is provisional and inherently contestable. Because being committed is a matter of being held to be committed (by others as well as oneself), the content of these commitments cannot be spelled out in abstraction or in advance of engagement in practice, but is rather determined provisionally in the actual play of relations. Moreover, since the content of one's commitments depends on ongoing action and response, a subject cannot fully know in undertaking a commitment what will later count as living up to that commitment.

To get a sense of how Brandom puts this framework to use and to get a better grip on the significance of his social perspectivism, it is worth looking briefly at his deontic scorekeeping account of knowledge. My proposal will be to think of "legitimacy" along the same lines, while noting significant differences as well. Brandom offers a reinterpretation of the traditional understanding of knowledge as "justified true belief."[30] On that view, for someone to know that p is (a) for them to *believe* that p; (b) for them to be *justified* in believing that p (rather than just happening to believe it); and (c) for p to be *true* (because one may have good reasons for believing something but nonetheless happen to be mistaken). Brandom approaches this from a pragmatic angle: for him, the primary question is what it is to *take* someone to know something, rather than what it is to know something.

The key is to recognize the differences of social perspective between a speaker who makes an assertion, and a listener who grants that assertion the status of knowledge (on the part of the speaker). Brandom distinguishes between the attitudes of attributing, undertaking, and acknowledging a

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[29] Brandom, 601.
[30] Brandom, 201–04; Brandom, "Knowledge and the Social Articulation of the Space of Reasons." Brandom's understanding of knowledge and truth, and objectivity are subject to debate. See, for instance, Lafont, "Is Objectivity Perspectival?"; Loeffler, "Normative Phenomenalism"; Rosenberg, "Brandom's Making It Explicit."

commitment. *Attributing* a commitment is the attitude of taking someone to be committed to something. *Undertaking* a commitment is to do something that entitles others to attribute the commitment to you, whether or not you acknowledge this commitment. And to *acknowledge* a commitment is to attribute it to yourself, taking yourself to be thus committed.

Now, in Brandom's view, to take someone to know that p is (a) to attribute to them a (doxastic) commitment to p, (b) to attribute to them an entitlement to that commitment, and (c) to acknowledge commitment to p yourself. Knowledge is a "complex" and "hybrid" deontic status: complex because it involves two distinct flavors of normative status (commitment and entitlement), and hybrid in that it must be understood with reference to two distinct social perspectives. What is most interesting about this is what happens to the truth condition. Truth is not a property that a proposition must have, in addition to being believed and justified, in order for a claim to count as knowledge. To say that a claim is true is just to express commitment to it. Likewise, "knowledge" does not refer to some class of claims or beliefs that are not only justified but also *really* true, independently of any scorekeeping perspective.[31] Rather, when I take you to know that p is the case, I attribute to you a commitment and an entitlement to holding that p; but I also acknowledge a commitment to p on my own part. It makes no sense to deny that p is true and yet claim that someone knows that p.

2.5 Political legitimacy as a complex hybrid deontic status

Like knowledge, political legitimacy is a socially perspectival and inferentially articulated standing in the space of reasons. And like knowledge, it is complex, involving the statuses of commitment and entitlement, and hybrid, in that it must be understood with reference to multiple perspectives (subject, authority, and other subjects). The crucial difference, though, is that the commitments involved in knowledge are doxastic (beliefs about how things are), but in the case of political legitimacy they are *practical*: they are commitments to *do* certain things—in our case, to take-and-treat each other

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[31] As Joseph Rouse puts it: "There are many appropriate ascriptions of 'knowing' within the multifarious practices of assessing, attributing, relying upon, or contesting understanding and justification, but there is no *nature* of knowledge underlying these ascriptions." Rouse, *How Scientific Practices Matter*, 179.

in certain ways.[32] Knowledge pertains to our cognitive relation to the world, whereas political legitimacy concerns our practical relation to a regime. This is inherently a political relationship, a power relationship. As we will see, this introduces an asymmetry between the practical and the observer's point of view that does not arise in the case of knowledge claims.

What, then, is the perspectival and deontic structure of legitimacy claims? Abstractly, such a claim, situated in a practice of stance taking, looks like this:

(1) Stance taker: This [authority] rules us [subjects] (il)legitimately.

Again, the brackets signal that the character of subjects and authorities is to be specified somehow. Notice that the claim is framed from the first-personal standpoint of a participant in stance taking. This reflects our pragmatic angle of approach: the point is to grasp a legitimacy claim in terms of its use, so we start from the practical standpoint. The last section will address the possibility of third-personal attributions of legitimacy from the standpoint of an observer.

Now in light of the conception of stance taking presented above, the pattern of attributions of commitments and entitlements made explicit by such a claim to legitimacy (or illegitimacy) can be laid out as follows:

a. The stance taker attributes a commitment to rule to [authority]. From the speaker's point of view, [authority] acknowledges a commitment to rule [subjects] and purports to be entitled to that commitment.[33] (In the absence of such a claim, it would appear as naked power or domination, not authority.)

b. The stance taker attributes (or withholds) an entitlement to rule to [authority]. From the stance taker's own point of view, [authority's] commitment to rule is either compatible or incompatible with other things the speaker takes [authority] to be (implicitly) committed to. That is to say, the speaker considers [authority's] claim to be entitled to rule as justified (or not).

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[32] For Brandom, there is a sense in which believing things about the world is also a kind of doing (undertaking commitments, interpreting claims, drawing inferences), but this does not prevent him from drawing a key distinction between doxastic and practical commitments. Brandom, *Making It Explicit*, for example, 238–43.

[33] A defeasible claim that one is entitled to a commitment is implicit in acknowledging a commitment. This just means that one purports to have reason to do what one does; that it is not incompatible with one's further commitments.

c. The stance taker acknowledges a commitment to treating [authority] in ways appropriate to its status. If the speaker claims that [authority] is entitled to rule [subjects], that implies that the speaker, qua [subject], is liable to being governed. In making this claim, the speaker acknowledges that they are responsible for treating [authority] as a source of further commitments and entitlements (e.g., by complying with its demands or restrictions, upholding the regime, pursuing the modes of action it opens up).[34] On the other hand, if [authority] is *not* entitled to rule (from the speaker's point of view), then it cannot genuinely commit or entitle the speaker to do anything, and so the speaker commits themself to treating [authority] as a mere imposition (which it may, e.g., be appropriate to resist).

d. The speaker attributes the same commitment to treating this [authority] in ways appropriate to its status to other [subjects]. A stance toward a regime is also a stance toward others subjected to the regime. This is because rule is a relation of power between [authority] and a class of [subjects]; it is not addressed personally to a single stance taker.[35] Of course, the boundaries of that class of [subjects] (and potential differentiations among them) remain to be specified. So, in calling the [authority] (il)legitimate, the speaker normatively expects the same stance of recognition or rejection on the part of others, and commits to treating them accordingly (e.g., by exhorting loyalty or mobilizing resistance).

Much remains implicit and underspecified in claim (1). The following mini-dialogue comes a little closer to what a real-life dispute might look like:

(2) Stance taker A: "Our queen rules us legitimately. Stop your devious plotting and rejoice!"

(3) Stance taker B: "No way! That tyrant is not my queen. Let us bring her down."

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[34] On this point, I follow Applbaum's "power-liability" view (despite our difference in approach). He defines legitimacy as a normative power, the power to change subjects' normative situation. As such, it does not simply correlate with a duty to obey. Applbaum, *Legitimacy*.

[35] This reveals another difference with Brandom's analysis of knowledge, which involves only two perspectives (interpreter and knower).

These stance takers don't differ only as to the modality of their stance (recognition or rejection), which is what the abstract claim in (1) sought to highlight. They differ in two further respects: characterizing [authority] in different ways, and spelling out some of the practical implications they take their stance to have.

The content of all these further commitments is inferentially articulated. Upstream in the space of reasons are the reasons why this [authority] has the character that it has ("our queen" or "that tyrant"), and why as such she is entitled to rule (or lacks that entitlement) from the speaker's point of view. These reasons may be different from those the authorities explicitly endorse. For example, a religious believer may regard any form of rule as ordained by God, even if the queen presents herself as secular. Downstream lie the practical implications of [authority's] having that status, specifying on the one hand what "ruling" consists in, and on the other what subjects are supposed to do that is "appropriate to its status"—in other words, what recognizing or rejecting the regime amounts to practically. Thus, people can take stances with the same modality (recognition or rejection) while disagreeing about the attendant responsibilities (political obligations) they thereby undertake; for instance, whether or not it is appropriate to take up arms against a tyrant, whether one might refuse serving in the army of even a legitimate queen, and so on. In practice, all of this is filled in differently in different contexts and from different points of view, though it can be made explicit in the game of giving and asking for reasons.

The point here is not that legitimacy claims literally take the form represented in claim (1). Whether a claim is a claim of political legitimacy depends on whether it has the role of expressing a political stance toward [authority]. The protesters' chant "The people demand the fall of the regime" is a fairly straightforward claim of illegitimacy. Although the word "legitimacy" doesn't occur in the phrase, its point is clearly to explicitly reject the regime's rule. The slogan articulates a perceived incompatibility between the persistence of the regime's rule and the demands of the people. It is almost functionally equivalent to "This regime is illegitimate." Almost, but not exactly, because it also casts [authority] in terms of "the regime" (not a neutral term here) and [subjects] as "the people," entitled to make demands. Moreover, it situates the protesters as on the side of the people, and regime loyalists as against them. Joanna's stance, by contrast, doesn't become unambiguously explicit. While it is clear that she is against the monarchy, it is not evident that this monarch *rules*. Whether her protest should be taken as a

rejection of the regime as such or just a polite proposal to change a marginal feature of the political system is open to interpretation. (As we will see in Part II, though, her claims about the political system, political identity, and the untimeliness of the monarchy still bear on the question of legitimacy, even if her stance is ambiguous.)

Of course, taking stances is not just a matter of polite conversation and argument, as the street battles around Tahrir Square and the political violence in West Germany bring out. Since authorities tend to have other means at their disposal besides justifying themselves discursively or changing their ways, and because their claim to legitimacy can be disingenuous or farcical, making one's stance of rejection explicit in the face of that authority often carries significant risk. Moreover, such rejection can find expression not only in assertions of illegitimacy, but also in deeds—public ridicule or implicit parody of authorities, desecration of public symbols, gathering and marching in protest, acts of violence, and so on. The RAF, like others in the radical left, saw the *Bundesrepublik*'s explicit commitment to democracy and the rule of law as masking its true nature as a fascist police state. Because the RAF regarded the state's claim to legitimacy as disingenuous, they saw little point in discursively engaging it. Nor did they believe their actions would lead directly to the overthrow of the system. The self-declared point of the RAF's actions, at least initially, was rather to shift the stances of other subjects in relation to the *Bundesrepublik* by changing their perception of it and subverting their self-understanding as democratic citizens, with bombs that would "detonate also in the consciousness of the masses."[36] This suggests that nonlinguistic political actions, including acts of violence, can do (or attempt to do) by other means what discursive assertions of legitimacy do explicitly, namely to affect the stances of [subjects] and [authorities].

2.6 Legitimacy *de jure* and *de facto*

I have proposed that the point of the concept of legitimacy (and functional equivalents) in political practice is to make political stances explicit. Still, someone might grant all this about the political pragmatics of legitimacy,

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[36] RAF, "Über Den Bewaffneten Kampf in Westeuropa," quoted in Varon, *Bringing the War Home*, 199. See also RAF, "Das Konzept Stadtguerilla."

while denying that this helps us to say anything about what it means to really *be* legitimate. What it is to claim legitimacy may not seem to get at the heart of what it is to *be* legitimate. So it may seem that we still need to explain the nature of political legitimacy in a way that goes beyond the pragmatics of legitimacy claims, perhaps by invoking the moral character of legitimacy as a property. After all, we need to distinguish what is legitimate (*de jure*) from what is merely taken to be so (*de facto*). I agree that this distinction is crucial, but we do not need a deeper account of the nature of legitimacy to grasp it. The pragmatics of disputing legitimacy provide all the resources we need to make sense of the difference between an authority's being legitimate, and its merely being taken as such—though not, of course, for drawing the line in practice.

The key to understanding what legitimacy is in terms of what it is to take something to be legitimate is to explain the distinction between *de facto* and *de jure* legitimacy in terms of the situated perspectives of participants engaged in political practice. The basic idea is to locate the distinction within the practical point of view of a participant in stance-taking practice, and to say that it reflects a tension that emerges from the perspectival structure of that practice. Briefly put, for political authority to be legitimate (according to someone) is for it to be appropriate to take it to be legitimate (from that perspective)—and not just for it to be *taken* as legitimate (from others' point of view). This builds into the definition of the concept a reference to the first- and second-personal perspectives of stance takers. What is legitimate is not reducible to what is taken as such, but what it means to be legitimate can be explained in terms of what it is to take it as such.

To flesh out what this means, it is helpful to consider two alternative and equally problematic ways in which one might interpret the idea that being legitimate can be understood in terms of takings-as-legitimate. First, the claim that the distinction between the *de facto* and *de jure* senses of legitimacy should be understood from a practical standpoint might be understood as meaning that legitimacy is merely subjective. The idea would be that from any perspective, what is legitimate is simply what is taken to be legitimate from that perspective. But to conceive legitimacy as merely subjective collapses the distinction (from a participant's perspective) between something being taken to be legitimate and something actually being legitimate, and hence denies the possibility that one might be mistaken. While there is no sovereign point of view from which a stance can be qualified as appropriate or inappropriate, this does not make stances arbitrary; from the

perspective of any participant, stances (including one's own) are liable to critical evaluation, and participants can be held responsible for them.

Attempting to avoid the trap of subjectivism, one might fall into another. A second proposal might be that whether a political stance is appropriate or not is not up to the individual, but to the community as a whole, as represented by a set of collectively accepted principles. Any particular subject can then be understood to be correct or mistaken with reference to those communal norms. This suggestion recognizes that one can have commitments that one fails to acknowledge. But just as subjectivism negates the possibility of a subject's being mistaken, the move to communal norms denies the possibility that the community could be mistaken, as well as invoking a reified conception of the community as a whole.

Instead of collapsing what is legitimate into what is merely taken to be so (whether by an individual or by a community), we can interpret this distinction as articulating a fundamental tension between the commitments you happen to acknowledge or attribute to yourself, and those you actually undertake.[37] Engaging in discursive practice involves taking the perspectives of others as well as yourself, comparing how things appear to others and how they are (according to you), and distinguishing what others acknowledge commitment to from what you take them to actually be committed to. The possibility of being mistaken can therefore be understood, in the first instance, in terms of the differences of social perspective between participants, namely as the discrepancy between commitments others attribute to themselves, and those they actually undertake (from the perspective of some scorekeeper). Yet discursive engagement also introduces a moment of reflexivity: one puts the commitments one acknowledges up for assessment, committing oneself to providing reasons when challenged and to revise one's repertoire if compelling challenges are put forward. There is always the possibility that some of your acknowledged commitments will turn out to be inappropriate, even in your own eyes.[38] What you are truly committed to, in contrast to what you acknowledge commitment to, is not given and fully transparent to yourself, but always remains at issue. This tension can be

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[37] My argument in this section is inspired by Brandom's accounts of normativity and objectivity. See especially Brandom, *Making It Explicit*, 37–41, 52–55, 584–601.

[38] As Brandom puts it, the commitments one actually undertakes always "outrun" those one acknowledges. Brandom, 627. I discuss this point in more depth in Fossen, "Politicizing Brandom's Pragmatism."

practically negotiated in ongoing action and response with others, but not definitively resolved. There is no master scorecard on which what one actually undertakes is recorded, nor a privileged point of view from which it could be evaluated.

In this light, the distinction between what is legitimate and what is merely taken to be so can be understood as just a specific case of this basic tension between the practical commitments one acknowledges, and those one actually undertakes, arising from the perspectival structure of disputing legitimacy. The normative status of legitimacy is brought into play by our ongoing implicit activities of taking-things-as legitimate and illegitimate, but it is not constituted by particular acts of taking-as. To say that an authority is legitimate *de facto* but not *de jure* is just to say that others take or treat it as legitimate, while it is not (from your own situated perspective). This is to interpret those others as taking a political stance to which they are not entitled (on your account), and to express your own stance of rejection. Likewise, you may want to say that the regime *is* legitimate even if others don't take it to be so. It is vital to distinguish your interpretation of other people's stances toward a regime from your own political stance. (And this, if you recall from Chapter 1, is precisely the distinction that gets lost in Weberian conceptualizations of legitimacy.)

2.7 Third-personal attributions of "legitimacy"

Let us finally examine the relation between the practical standpoint of someone situated within a concrete encounter with a regime and the standpoint of an external observer of that situation. Our enquiry started with the former, simply because we were trying to explain what legitimacy is in terms of the concept's practical role. But what should we say about third-personal attributions of legitimacy? Can't you make a claim about the political legitimacy of *any* regime, whether you find yourself practically confronted with it or not?

Of course, you can say of any regime that it is legitimate. But it is not evident what it means to say so. The practicality of the question of legitimacy introduces an asymmetry between the practical and the observer's standpoint that does not arise in the case of knowledge. The asymmetry stems from the difference between taking a political stance oneself and attributing commitments to others. Imagine an external observer, historically distant

from but informed about the situation in which our mini-dialogue between stance takers A and B took place:

(4) Critical historical observer: "That monarch ruled her subjects legitimately (even though some radicals rejected her)."

What is this claim expressing? And what is its pragmatic upshot?

As their dismissal of the "radical" stance taker B indicates, the observer is making a *de jure* claim, to the effect that the monarch's rule is justified (on the observer's account). The observer purports to adjudicate the dispute in that historical situation in favor of stance taker A, though not necessarily for the same reasons endorsed by stance taker A (which remain implicit here). However, and this is crucial: the observer is not expressing a political stance. On the account offered above, taking a stance is practically taking-and-treating the regime in a certain way. Stance taking presupposes the existence of a contentious political relationship, and *ex hypothesi* our observer does not find themself practically confronted with the [authority] in question.

Consequently, the pattern of commitments and entitlements involved in claim (4) is different from the pattern laid out in Section 2.5. The observer does attribute a commitment and entitlement to the [authority] in question (a and b), considering their rule as justified. But the observer undertakes no practical commitment on their own part to take-and-treat this monarch in one way or another (c). And, although the observer attributes such a commitment to A and B qua [subjects], appraising their stances as appropriate or inappropriate (d), in this case, that amounts merely to a third-personal interpretation of what they are doing, not a concrete, first- and second-personal practical holding-to-account.

The obvious point is that, practically speaking, the observer stands in a very different relation to the situation than the participants. The observer is talking about a regime to which they are not subjected and disputing the stances of others who cannot talk back. The observer is not engaging with A and B and their regime in the same way that they engage with each other. As a consequence, the pragmatic significance of their statement is very different from a situated legitimacy claim: it expresses an *opinion* (*doxa*) but not a political stance (*praxis*).

It is true that the critical observer still commits themself practically in a hypothetical and indirect way. After all, commitments are inferentially articulated. If I claim, as an observer, that *that* monarch ruled her subjects (il)

legitimately, then it follows that if I *were* her subject, I would be committed to treating her in a manner appropriate to that status. Moreover, if the reasons for my saying that that historical monarch is legitimate also entail that the regime that I find myself confronted with here-and-now is legitimate, then my claim about her also implies a practical commitment vis-à-vis my own regime. (This latter point, though, would depend on a set of collateral commitments to the effect that it is a relevantly similar regime in relevantly similar circumstances, which are likely to be highly contentious.) So opinions can have practical implications. But their significance is not that of actually taking a political stance in relation to a regime. In contrast to the claims of our stance takers A (2) and B (3), the observer's assertion (4) partakes in political stance taking at most indirectly.

The same asymmetry between the practical and the observer's point of view does not arise for knowledge claims (involving doxastic commitments) because the knower and interpreter presuppose that they share a world of facts, such that commitments and entitlements about what those facts are can be inherited across different perspectives and different contexts.[39] Qua scorekeepers, they are part of a discursive community. By contrast, political stance takers in different contexts are often not part of the same political community.

The significance of this point remains to be examined. It depends on an analysis of the form of practices of political stance taking and the things and concepts involved in them, which we shall examine in Part II. In chess, this asymmetry is unproblematic. While there is, of course, a phenomenological difference between making a move oneself and evaluating someone else's moves, this does not really matter for evaluations of the propriety of moves since both players and observers familiar with the game can readily be assumed to share the same rules and concepts (how a rook moves, the conditions for victory, etc.). The player and the observer don't share the game, but they share the practice. In politics, however, this cannot be taken for granted. Only in a highly abstract sense do stance takers in one historical

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[39] See Brandom, *Making It Explicit*, 238–43. Especially p. 239: There is "a fundamental asymmetry between expressing a belief by making a claim and expressing it by performing an action. What I take-true I thereby, ceteris paribus, authorize you to take-true. . . . [I]n general what serve me as good reasons for belief can serve you also as good reasons for that same belief. What I (seek to) make-true, however, I do not thereby in general authorize you also to (seek to) make-true. What serve me as good reasons for action may or may not be available to you as good reasons for action. . . . For you and I may have quite different ends, subscribe to different values, occupy different social roles, be subject to different norms."

context and the next share the same practice, namely in the sense that they can be interpreted as engaging in stance taking toward some form of rule. But that does not presuppose that they share the same political concepts and are committed to the same norms. They may find themselves in very different constellations of power relations and with different practical self-understandings.

2.8   Conclusion

The view I've proposed thus far can be summarized as follows. The theoretical concept of political legitimacy names a practical, political predicament: confronted with authorities that attempt to rule them, political subjects are forced, implicitly or explicitly, to take a stance. When we call authorities legitimate, we do not represent them as having the property of legitimacy. Rather, we express our political stance toward that regime and toward others subjected to it. "Legitimacy" is a piece of practical vocabulary that enables subjects to articulate and dispute their political stances with others. Having a practical point of view involves distinguishing between what others *take* themselves to be committed to, and what they *are* committed to from one's own perspective; the stances they take and one's own stance. This is expressed by the distinction between *de jure* and *de facto* legitimacy: it articulates the difference between political authority that *is* legitimate—from one's own perspective—and that which is *merely taken* as such by others—or, reflexively, by oneself. This distinction reflects the perspectival character of the practice of disputing legitimacy.

This is, in a sense, a deflationary concept of political legitimacy. It explains what political legitimacy is in pragmatic terms and claims that this is all one needs to say about the nature of legitimacy. But, of course, as political subjects, we still face the practical predicament of what stance to take—whether the regime confronting us is legitimate and what sorts of further responsibilities this involves (to obey and uphold that authority? to resist?). It follows from Brandom's social perspectival account of meaning that judgments and criteria of legitimacy are inherently contestable because no one's perspective is sovereign. Disputing legitimacy is a matter of making explicit and altering the scores that one takes to obtain here-and-now from these-and-those points of view—although the boundaries of the here-and-now and the range of pertinent points of view remain open questions.

When seen in this light, enquiring about the reasons someone might have for taking-and-treating a regime as legitimate or illegitimate appears not as a matter of disclosing the sources or grounds of a mysterious property, as if discovering and communicating an independently true score, but as a situated intervention in a political dispute.

Yet this only takes us so far. As far as Brandom's theory is concerned, social perspectivism is a feature of any game of giving and asking for reasons, not just disputing legitimacy. The abstract acknowledgment of situatedness and contestability is not enough. To grasp what is at stake in the question of legitimacy, we should not focus narrowly on trying to pin down the content and justification of reasons (in a contextual manner), but also enquire how such reasons come into play. It is precisely because language doesn't tell us how to judge the legitimacy of a regime that a pragmatic approach draws our attention to the dynamics and conditions of the *political* (and not just generally discursive) practices in which political legitimacy is at issue, and the vulnerabilities to which they expose us.

3
Rethinking Judgment

3.1 Introduction

We turn now from the concept of political legitimacy to the problem of judgment: What is involved in judging the legitimacy of a regime? The notion of judgment is undertheorized in the philosophical literature on political legitimacy. As we saw in Chapter 1, contemporary theorists of legitimacy focus on a certain form of normative knowledge: the content and justification of principles of legitimacy. This implicitly construes judgment as a cognitive act in which one brings normative criteria to bear on a particular situation. No sustained attention is paid to the ways in which the question of legitimacy presents itself in practice and the forms of practical engagement through which it might be addressed. However, if criteria of legitimacy are not simply given to judgment, but subject to persistent disagreement and uncertainty, then this framing of the problem appears problematic. In rushing to provide a certain sort of answer to the question of legitimacy, theorists of legitimacy ignore the political conditions under which the question appears, thus neglecting to adequately diagnose the problem in the first place.

This chapter develops an alternative picture of judgment to better grasp the ways in which the question of legitimacy manifests itself in practice. As a starting point, let's say that judging legitimacy is distinguishing in practice whether the regime with which one finds oneself confronted is legitimate, or merely purports to be so. This responds to the thought (developed in the previous chapter) that the question of legitimacy should be understood in first instance as a practical predicament: a question of what stance to take toward the authorities one faces. Legitimacy isn't a property that political authorities have or fail to have under independently specifiable conditions. Rather, it is a normative status that is attributed or withheld from concrete, embodied perspectives of individuals in a political situation. If, following the analysis of Chapter 2, calling an authority legitimate is expressing a stance toward it, then judging legitimacy can be thought of as adopting or shifting such a stance.

I shall propose that we frame judgment in this context not as a discrete moment of decision, but rather as an ongoing, intersubjective practice. Judgment refers to a complex of activities through which our sense of political reality is constituted, maintained, transformed, and sometimes subverted. It is a matter of getting a grip on, or coming to terms with, a political situation. I call this a practice of *attunement to political reality*. The present chapter introduces the distinctive features of this notion of judgment. This opens the way for an investigation of the forms of political involvement that judging legitimacy consists in. Part II seeks to map these various activities: judging legitimacy is a matter of representing the authorities one way or another (Chapter 4); articulating who one is (Chapter 5); and crafting political time and space (Chapter 6).

3.2 On the notion of reflective judgment

Recall from Chapter 1 that the normativist approach to political legitimacy relies on an implicit picture of judgment as the application of given principles to the facts at hand. Judgment is a cognitive act in which one brings criteria to bear on a particular situation. The relevant facts and norms must be treated as given, if judgment is to get off the ground. At a moment of judgment, disagreement and uncertainty are out of the picture. They ought to have been dealt with at the prior level of justification. I called that implicit picture impersonal and ahistorical, in the sense that it does not matter who judges, where, and when, as long as one has the correct factual and normative knowledge at one's disposal.

If reflection on the notion of judgment has been as good as absent from the literature on political legitimacy, the same cannot be said of political philosophy (or political theory) more broadly. Indeed, there has been a surge of interest in political judgment in recent years. This turn to judgment is largely motivated by dissatisfaction with the focus on general principles in mainstream political philosophy. Whether because they are critical of abstract universalism, skeptical about the prospects of practically achieving consensus, or appreciative of the value of pluralism, these critics hold that a conception of political judgment should acknowledge that political standards remain subject to persistent disagreement and uncertainty. My project is motivated by similar concerns and partly builds on this work. It may therefore be useful, as a starting point, to contrast the normativist picture of judging legitimacy,

as articulated in Chapter 1, with the most influential and well-developed alternative found in this body of work: theories of reflective judgment.[1] We'll see that these theories challenge the normativist picture in some but not all important respects.

In doing so, we need to bear in mind that none of these theorists address the question of legitimacy specifically.[2] In fact, many studies of "political judgment" remain frustratingly vague about what sort of question the account is supposed to address, failing to differentiate among various possible questions, contexts, and objects of judgment.[3] I don't think we can assume that all political predicaments call for the same form of judgment. The question of whom to vote for, how to frame a policy initiative, what counts as a just tax rate, and whether or not to take to the streets and demand the fall of the regime (to name just a few) are all in some sense political and call for judgment of a sort. Our aim here is not to develop a comprehensive theory of (political) judgment as such, but to respond to a specific question that arises in a specific type of context: the question of how to relate practically to the regime with which one finds oneself confronted. Let us assume, for the sake of argument, that theories of reflective judgment are also meant to address this question.

The notion of reflective judgment was developed by Kant in the *Critique of Judgment* to explain aesthetic and teleological judgments, and influentially reinterpreted as a distinctively political concept by Hannah Arendt.[4] Kant draws the distinction between determining and reflective judgment roughly as follows. Let's say that to judge is to characterize an object or action as something: as a table (theoretical judgment), as permissible (practical judgment), as beautiful (aesthetic judgment), or as legitimate (*political* judgment, in the narrow sense of this book). In determining judgment, you have a frame of reference at hand, a set of pertinent empirical concepts or normative standards, and you proceed to determine how a particular object or action fits within that frame ("subsuming" the particular under the

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[1] See, among others: Azmanova, *The Scandal of Reason*; Beiner and Nedelsky, *Judgement, Imagination, and Politics*; Ferrara, *The Force of the Example*; Zerilli, *A Democratic Theory of Judgment*. In addition to theories of reflective judgment, see also Bourke and Geuss, *Political Judgement*. For an innovative theory of democratic judgment, see Meckstroth, *The Struggle for Democracy*.

[2] The only exception I have found is Mulligan, "Legitimacy and the Practice of Political Judgement."

[3] Typical in this regard are the influential studies of Beiner, *Political Judgment*; and Steinberger, *The Concept of Political Judgment*. Recent exceptions include insightful studies of judgment about state apologies and about humanitarian intervention: Mihai, "When the State Says 'Sorry'"; Thaler, "Political Judgment beyond Paralysis and Heroism."

[4] Kant, *Critique of the Power of Judgment*; Arendt, *Lectures on Kant's Political Philosophy*.

universal).[5] The normativist picture sketched in Chapter 1 is a form of determining judgment because the particular authority in question is brought under a principle of legitimacy that is given in advance. In contrast, in reflective judgment, you do not have such a frame of reference available. You have to somehow determine the object, qualify it as something, without having appropriate concepts or criteria given in advance. You have to make up the criteria as you go, so to speak. For Kant, this is paradigmatically the case where beauty is concerned. Determining whether or not something is beautiful is not a matter of ticking a number of predefined boxes. Still, a judgment of beauty is by no means arbitrary. Taking something to be beautiful implies (for Kant at least) that one expects others to share this judgment. It is a claim to validity. But this is a kind of validity based on the "force of the example," rather than the force of law or principle.[6] When we claim that something is beautiful, we are not describing a certain property that the object has, nor are we reporting a merely causal effect it has on us. An aesthetic response is still a judgment, situated in the space of reasons, but in a rather peculiar way; the aesthetic section of the space of reasons is inherently underdetermined.

This exemplary validity emerges from the encounter with the object, from the interplay between subject and object. Explaining how this works exactly is no easy task. For Kant, this involves a specific account of how our mental faculties are involved in aesthetic experience: the "free play" of the understanding and the imagination.[7] What entitles us to declare our judgment valid for others as well is that we can assume these mental faculties to be shared by all humans. Judging well involves not just getting clear on how we feel about the thing, but imagining how others would feel if similarly situated. This sketch already skims over a number of interpretative issues, but there is no need to address those here, since as far as I am aware, none of the contemporary theorists of political judgment wish to take on board these specifics of Kant's story. There is little agreement, however, on what to substitute.

Whatever the philosophical and hermeneutic complications involved in fleshing out this picture of judgment, for political theorists skeptical about the philosophical justification of principles and appreciative of pluralism and

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[5] Kant, *Critique of the Power of Judgment*, 5:179.

[6] Ferrara, *The Force of the Example*.

[7] Kant, *Critique of the Power of Judgment*, 5:217. Not least among the difficulties in transposing the notion of reflective judgment to politics is the fact that for Kant it is precisely our lack of practical concern with respect to the object of aesthetic judgment that makes it possible to claim validity for such judgments. For it is precisely our disinterestedness and impartiality that open the space for the free interplay of our faculties from which this kind of normativity emerges.

disagreement in politics, this notion clearly holds a great deal of promise. Reflective judgment differs from the normativist picture in key respects. Most notably, the conception avoids the problem that contentious norms must be treated as given prior to judgment, since it conceives of such standards as themselves at stake in it. Validity derives from judging itself, not from a standard external to it. For the same reason, contingent aspects of political situations can affect the content and justification of criteria of legitimacy, and not just their circumstances of application, if one can still speak in those terms. After all, the whole point of this picture is to do justice to particularity. Thus, this conception also seems well suited to account for the new and unexpected.[8] In both respects, it rejects the separation of justification and application presupposed by the normativist picture and points to new ways of political theorizing.

A further respect in which reflective judgment differs from the normativist picture is that judgment is not impersonal. I cannot judge something to be beautiful merely on account of your report about it; I must stand in a certain concrete relation to the object, if I am to judge it. This is because the judgment isn't simply about the object but also about my relation to it, the effect it has on me. I must actually be confronted with the example, if it is to exert its force (and set in motion the free play of the imagination and the understanding). Finally, with regard to the quality of judgments, reflective judgment also diverges from the normativist picture. Good judgment cannot be understood in terms of the propositional content of judgments but must be accounted for in terms of the way in which subject and object relate to one another. In all those ways, reflective judgment undeniably has its attractions given the aims of the present project. And in many ways the story told in the rest of this chapter resonates with and benefits from this literature.

On reflection, however, it is not so clear whether reflective judgment fares so much better than the normativist picture in avoiding the myth of the given. If the normativist picture, in construing norms as given to judgment, wishes away uncertainty and disagreement about criteria of judgment or relegates them to another activity (justification), reflective judgment seems simply to pull a response to disagreement and uncertainty out of thin air. The validity of judgments is enigmatically generated *ex nihilo*, rather than being bound up with ongoing forms of political contestation. Insofar as Kant's free play of

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[8] Herein lies the attraction of the view for Mihai, "Theorizing Change"; and Wenman, *Agonistic Democracy*, Chapter 7.

the faculties is substituted by an alternative story, the mythical given pops up again in a different form: the *sensus communis*, or whatever name one gives to that which makes it so that *this* particular is exemplary of beauty, or legitimacy.[9] In this respect, reflective judgment simply mirrors the normativist picture, rather than overcoming it.

This links up with a crucial presupposition that the notion of reflective judgment shares with the normativist picture: it narrows judgment to a particular subjective moment of decision, a mental process.[10] Granted, the two pictures differ as to how to characterize this moment: whether principles are treated as given to judgment, or to be found in it. But they both take a time slice from ongoing practice and call it judgment, ignoring the ways in which judgment is situated in an ongoing course of action. Both pictures are historically truncated.[11] And insofar as our concepts and criteria are thought to emerge from, rather than constrain, such episodic encounters with particulars, it remains enigmatic how our judgments could hang together and give us a genuine (if always precarious) grip on situations. The challenge, I think, is not to explain how one can judge politically in the *absence* of concepts or criteria, but how received concepts and criteria of judgment are at the same time at stake in it. And for this, one needs to situate particular moments of decision in ongoing practice of judging. For these reasons, I think the notion of reflective judgment does not challenge the normativist picture deeply enough.

3.3 Judgment as a practice of attunement

The notion of judgment is notoriously equivocal. Judgment can refer to a mental faculty or capacity (the power of judgment), to the exercise of such

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[9] For example, Alessandro Ferrara offers a convincing critique of two strategies for explaining the *sensus communis*: a hermeneutic one, which traces it to a shared tradition or lifeworld background, and a naturalistic one locating it in certain natural abilities. I am not convinced, however, that his alternative solution in terms of a "capacity to sense the flourishing of human life and what favors it" manages to avoid taking as given what is at issue. Ferrara, *The Force of the Example*, 31.

[10] This is also Matthew Weidenfeld's concern. Although I am more sanguine than he is about Arendt's work (for reasons discussed in Section 3.4), I find his critique of the reflective judgment paradigm compelling. Weidenfeld, "Visions of Judgment."

[11] Linda Zerilli's notion of judgment as a "world-building practice," while inspired by the notion of reflective judgment, also moves beyond it and toward a more dynamic and performative notion—for building, it seems, must be understood as a form of action. Yet, as Julen Etxabe incisively observes, Zerilli still tends to conceive judgment as a self-contained act, rather than a temporally extended practice. Zerilli, *A Democratic Theory of Judgment*; Etxabe, "Arendt, Democracy, and Judgment."

a capacity (acts of judging), to the product of such an exercise (the judgment made).[12] Moreover, these things can be studied under different aspects. Wayne Martin usefully distinguishes three "faces of judgment": psychological, logical, and phenomenological. The psychological face shows acts of judgment as causal mental processes; the logical pertains to the inferential relations among the contents of judgments (propositions); and the phenomenological concerns judgments as they are manifested in experience (what it is "like" to judge).[13] The three faces of judgment are the focus of distinct (and vast) literatures, and Martin shows that these are often in tension with one another, which attests to the difficulty of developing a comprehensive, unified account of judgment (which I will not attempt here).

For present purposes, it will be most fruitful to focus on a fourth political face of judgment, which Martin recognizes at the very end of his book. Judgment, he observes, "takes place in and presupposes certain forms of social interaction."[14] Martin's endpoint will be our point of departure: we shall consider judgment primarily as it is manifested in action. Our approach to political judgment, then, will not focus on a cognitive faculty, nor on mental events, nor on the discrete products of the exercise of such a faculty. Rather, we focus on judgment as a social practice, and particular judgments as moves or performances in this practice.

To introduce this way of looking at political judgment, consider first an example from a different type of context. Suppose you and I are wandering through the city center looking for a suitable place to share a meal. At every restaurant we come across, we examine the menu to see if there is something to our liking within our price range. We peek inside to sniff the atmosphere and appraise the clientele. We dismiss the first restaurant because it seems overly expensive; the next because you already had pizza yesterday. The third does not seem responsive to my allergies. So as we proceed, we make explicit some of the salient criteria that are in play. Other relevant considerations remain implicit. The exhaustion on my face may betray my impatience to just have a seat at the first establishment we see; perhaps you tacitly bracket your qualms about the price to accommodate me. So as we search for a satisfactory location for dinner, we engage in various activities. We assess information about the restaurants and the neighborhood, gauge each other's enthusiasm,

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[12] For an analysis of these and related distinctions, see Van der Schaar, "On the Ambiguities of the Term Judgement."

[13] Martin, *Theories of Judgment*.

[14] Martin, 173.

and feel the call of an empty stomach or an urgent need to make a pit stop. Some of this is a matter of explicit discussion, some of private reflection, and some goes on below the level of our awareness, like the smell of warm bread seducing us.

Where does "judgment" come into the picture, conceptually speaking? At what point do we "judge" the suitability of a restaurant? One apparently natural response, which I want to resist, would be to say that at each restaurant we come across we make a decision—to either go in, or move on—and this decision is what we should call our judgment. In the sequence of events, we can distinguish it from the reflection or deliberation that happens before, and the action that follows. We should then disambiguate this further by distinguishing the content of the judgment—that we go in, or move on—and its form, the act of making the decision. We should also acknowledge that this process already involves an array of prior judgments of a different kind that constitute our beliefs about the restaurant, ourselves, and each other. In any case, deliberation is supposed to terminate in a moment of practical judgment, which then issues in action: entering the restaurant, or moving on. Psychologically speaking, we might be interested in the mental processes that generate the particular decision. Logically speaking, we might focus on the array of inferences we draw (or fail to draw) in this process, some of which may be valid, others not. Phenomenologically speaking, we might try to analyze the experience of how and when a decision comes about. Finally, politically, we might investigate the performance in which the judgment is manifested: our joint action—or perhaps a breakdown or conflict.

Whether regarded as mental processes, logical inferences, subjective experiences, or social performances, practical judgment as an activity comes into the picture here as a series of discrete events. We make a separate decision for each restaurant. This segmentation has the advantage that it neatly distinguishes deliberation, judgment, and action as analytically distinct moments in the course of events. But focusing on such moments of decision also draws attention away from the way in which judgments (conceived as discrete acts and contents) are interconnected to form part of an ongoing activity. Just as in chess one must have a grasp of the game as a whole if one is to understand a particular move as the performance it is, we need an account of the practice of judging to make sense of what goes on in a particular moment of decision. And we cannot derive such understanding from an aggregate of discrete moves. The problem with chopping up the activity of judging into ostensibly independently intelligible parts is not that such moments

of decision do not happen, or that they are impossible to pin down. While moments of decision are undeniably pertinent to judgment, we should not reduce judging to a string of such particular moments of decision, or attribute primacy to them in the order of explanation. Doing so leaves salient features of judgment out of view, as we'll see presently.

The key proposal here is to understand what a judgment is (both act and content) in terms of an account of the ongoing activity of judging of which it is part, rather than the other way around. Just as the previous chapter sought to explain the meaning of legitimacy claims in terms of the practice of disputing legitimacy, our aim here is to account for judgments in terms of their role in a practice of judging. So I think we should provide a different answer to the question of where judgment comes into play in the scenario just sketched: we engage in judgment all along. Judging is an ongoing activity.[15]

Two further considerations count in favor of this alternative way of carving out our subject matter. First, consider that judging the suitability of a restaurant doesn't stop when we've entered the restaurant. We might revise our decision, for instance, because the service is slow or the cook has a runny nose. This reveals that we had not definitively judged the suitability of the establishment upon entering it. Particular moments of decision are typically provisional in this way, and that means they are not all there is to judging. One might, of course, say that what happens here is simply that one makes a new judgment. But that would ignore that it also casts a new light on the prior judgment, revealing it as no longer valid, perhaps even mistaken to begin with. Such provisionality can only be understood as an inherent feature of what we're doing in judging when judgments are situated in an ongoing activity.[16]

Second, consider why it is that we come across this or that restaurant in particular. Perhaps we left it to blind chance, stumbling through the city in arbitrary directions. Or perhaps one of us is relying on the other who, knowing the city better, is leading us in a direction where we are more likely to find a decent but inexpensive restaurant. Maybe, unknown to you, my cousin

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[15] The same point is well made by Etxabe, *The Experience of Tragic Judgment*; Hope, "Political Philosophy as Practical Philosophy," 466–67.

[16] Anthony Laden distinguishes two senses of provisionality: "a matter can be closed in a way that allows for reopening" or "a matter is never fully closed to begin with." Laden, *Reasoning*, 55, cf. 83. My suggestion is that judgment is provisional in the latter sense. But doesn't there come a point when the deed is done? Well, yes. Yet, even after we finish our meal, we might decide to write a review. Putting our appreciation of the restaurant into words may cast a new light on the experience. So there is a sense in which the content and validity of our judgment are not yet fully fixed even now.

owns this establishment and I am trying to get you to spend your money here. In any case, a considerable amount of stage setting must have taken place. The way in which the question arises for us now, facing this restaurant, wondering whether to enter or move on, is already conditioned by prior judgmental activity. This prior judging inflects what it is for us to judge here and now because our entering or moving on continues or breaks with this prior activity. In entering, for example, we express our ongoing willingness to dine together, in addition to determining that we do so here and now. You continue to rely on my sincerity, rather than breaking off our shared activity and going our separate ways. Again, if we construe judgment in terms of a particular moment of decision, these aspects appear as external to what it is to judge. Of course, no one would deny that context is important for how a decision is made; constraining, for instance, what information is available. But the thought here is stronger, namely that judgment is inherently path-dependent: our own uptake of our prior judging is part of what it is for us to judge here and now. This path dependency is a constitutive aspect of judgment.[17] In sum, particular judgments should be understood as historically situated in an ongoing practice of judging, in both a backward- and forward-looking sense.

If judgment is an ongoing activity, what sort of activity is it? The basic idea here is that judging refers to the various ways in which we try to get a grip on the situation in which we find ourselves. In judging, one relates practically to salient aspects of the world, and to others encountered in that world. In the present scenario, this means that judgment refers to the ways in which in our quest for a delectable and convivial meal we comport ourselves vis-à-vis the restaurants we pass, but also vis-à-vis ourselves, each other, and elements of our surroundings. I'll call this "judgment as attunement to reality."[18]

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[17] "Judgment rejudges," as Hans Lindahl succinctly puts the point. Lindahl, "Representation Redux," 486.

[18] My proposal here is of a piece with Martin's notion of "judgmental comportment," which refers to "how, in judgment, the judge orients himself toward various entities and authorities in play in his world." Martin, *Theories of Judgment*, 155. While my account of judgment resembles Martin's in many respects, my mapping of the constitutive dimensions of judgment differs from his on two points. We both see the object, the subject, and others as irreducible elements. But I do not think that *evidence* constitutes a further, distinct dimension; rather, one's way of dealing with evidence (or failing to do so) is part of how one comports oneself toward an object, oneself, and others. Instead, I add the dimension of what I call "surroundings": things and events that make up the broader setting in which one judges. Cf. Martin, 155–70. Matthew Weidenfeld also provides a compelling account of judgment as comportment, drawing on Heidegger and Dreyfus: Weidenfeld, "Comportment, Not Cognition."

This way of framing the problem of judgment draws attention to the various things one might *do* when faced with the predicament of judging a restaurant, such as having another look at the menu, glancing down the alley to see if there are alternatives nearby, asking one's companion, "How are you feeling?," looking up reviews on a smartphone, or asking the waiter how their kitchen handles allergens. On the view I propose, such activities are part and parcel of judging. In contrast, on the segmented conceptual regimentation sketched above, all of this is merely preparatory work, prior to judgment. On that view, the preceding information gathering and stage setting are qualitatively different activities from judging. The question "How can we judge?" then becomes practically perplexing, rather than enabling, because the things we could undertake to get a better grip on the situation no longer count as judgment in the relevant sense.

Attunement to reality is clearly something one can perform in better and worse ways, although what counts as such is highly contextual. For example, neglecting to ask about allergens might in certain circumstances constitute a failure of attunement to one's bodily constitution and its propensity to react in vehement ways to certain foodstuffs, and to the likelihood that such ingredients are used in this kitchen. Your failure to notice and respond to how tired I am could likewise be construed as a failure of attunement, as perhaps would be my neglect to point it out to you.

The notion of attunement is meant to signal that this is a temporally extended, dynamic, and open-ended process of adjustment, a back-and-forth. It is also meant to convey something of the precariousness of this process, and consequently of our grip on reality. There is no guarantee that this back-and-forth will result in harmony. Especially in a political context, which is always in flux and characterized by different points of view, attunement is inherently open-ended.

3.4   Non-sovereignty and the space of appearance

The problem with which we are concerned here is not that of judging restaurants but regimes. Yet, like finding a suitable restaurant, judging the legitimacy of a regime involves a variety of forms of attunement to reality. The relevant forms of activity differ, insofar as the question at stake and the structure of the situation are different. In judging legitimacy, one comports oneself toward the authorities, toward oneself and other subjects, and toward

surrounding things and events. Each element constitutes an irreducible aspect of a situation in which one finds oneself confronted by power; we'll explore these issues in Chapters 4–6. The remainder of this chapter seeks to develop the notion of judgment as attunement to political reality further, and to contrast it with the normativist picture.

Recall our starting point that judging legitimacy is distinguishing in practice whether the authorities one faces are legitimate, or merely purport to be so. Recall also that the normativist picture regards such judgment as a subjective moment of decision: bringing a norm to bear on a case. The subject is sovereign over her judgment: it is her will or intention that determines its content, and determines whether she has judged at all.[19] In contrast, on my proposal, subjective decisions are not the essence of political judgment. Rather, judgment is conceived as a form of practical activity, performed continuously by subjects facing authorities. There are two aspects to this, which both go against the presupposition of sovereignty: it is not a momentary event but a temporally extended practice, and this practice is *inter*subjective rather than purely subjective.

In the previous chapter, politics was conceived as a practice of stance taking between and among subjects and authorities. In such a context, one cannot avoid adopting *some* stance toward the regime, however implicitly, since one inevitably treats the authorities in one way or another, whether one ignores them as much as possible, actively provides support, engages in resistance, or attempts to flee. We continuously, though perhaps unwittingly, *take* authorities to be legitimate or illegitimate. The move now is simply to say that in taking or treating the authorities as such, implicitly or explicitly, one judges them. This implies that judgment is ineluctable, so long as one partakes in the relevant practice.

Compare voting in elections. If you have the right to vote, you count as a member of the electorate whether you turn out to vote or not. Not voting when you could have is an electorally significant performance, too. So there is a sense in which you partake in electoral practice, and count as a judging subject, whether or not you give any thought to the election, let alone consciously opt for one or another candidate.

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[19] Sharon Krause captures this nicely: "We hold to a sovereigntist view of agency to the extent that we identify agency in the ideal case with being in control of one's action, where the content of one's will defines the meaning of the action, and one's effects manifest one's own reasoned choices rather than the wishes of others or the random effects of chance." Krause, *Freedom Beyond Sovereignty*, 3.

This has the following important implication: decisions are not decisive. You count as a judging subject by virtue of being a participant in political practice, that is, insofar as you can be interpreted as a stance taker, not by virtue of a process in your brain or the exercise of a cognitive capacity. So you can judge without making a conscious decision, and you can decide without judging. You may have never thought about the question of whether or not the authorities are legitimate. Nonetheless, in treating them in one way or another, you implicitly judge them. Conversely, if you decide that from now on the regime has crossed the line and lost its legitimacy, but as far as anyone can tell, you carry on as before, you haven't really judged differently. You haven't done anything to entitle others, or in fact yourself, to attribute a negative judgment to you. Politically speaking, you haven't judged differently at all, even though you think you've changed your mind.

Of course, to say that judgment is ineluctable leaves entirely open in what manner one is judging; whether one does so wisely or foolishly, in a way that is well attuned to what is salient in the situation, or not. And, of course, that is precisely what matters. To insist that one counts as judging, even if one pays no heed to the question, highlights both that thoughtlessness does not absolve responsibility, and that there is always the possibility of shifting one's stance.

Let me linger on this point because this is perhaps the most controversial and counter-intuitive element of my proposal. It goes against a pervasive assumption, not only of the implicit normativist picture but also in much of the explicit literature on judgment. Judgment is usually construed as what takes place "behind" an act, the latter being merely an outer, social manifestation of an internal, mental process.[20] But on the view proposed here, to say that someone judges the authorities to be legitimate is not to report about an event in their head but to attribute to them a certain political stance. The key point is that, politically speaking, judgments of legitimacy are essentially public, manifested in action. A subjective decision that is not (yet) manifested in action, that has not entered the space of appearance and shown its political face, has not truly happened. In order to count as a judgment in a political sense, it must make an appearance.

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[20] The idea that judgment occurs essentially *in mente* is prevalent in works on political judgment. See, for instance, Beiner, *Political Judgment*, 2; Garsten, *Saving Persuasion*, 8; Steinberger, *The Concept of Political Judgment*, vii. For the same observation and a critique, see Weidenfeld, "Comportment, Not Cognition."

Consider an example from another context: legal judgment in a trial. Only a verdict pronounced at a particular time (after the closing statements) and place (in the courtroom) by someone authorized to do so (a judge or a jury) counts as a legal judgment. Of course, we are focusing on a particular moment of decision here, but the legal judgment is clearly not reducible to a mental act. If a judge has decided a case in the privacy of her chamber, but a heart attack prevents her from pronouncing it, she hasn't judged, legally speaking. Moreover, a courtroom spectator may have formed his own opinion of the evidence and even committed it to print. His judgment makes an appearance in the public sphere, but still, legally speaking it does not exist. It does not enter the juridical space of appearance. A similar point holds for political judgments, although the space of appearance is less clearly demarcated and the conditions for appearance are not formally spelled out.

The notion of the space of appearance derives from Hannah Arendt, and in adapting it here, I mean to acknowledge what I take to be the crux of her conception of action.[21] Arendt breaks with notions of agency that directly correlate action with intentionality. The reason is that action takes place among a plurality of agents, each with a distinct perspective, whose coming together constitutes a space of appearance, an in-between where their perspectives intersect. That action essentially occurs among others means that the consequences of one's action are, in principle, beyond one's control and cannot be foreseen: those consequences depend on how those others regard and respond to it. But Arendt's point goes deeper. It extends not just to whether or not an action succeeds in accord with the intention of the agent, but to the very being and meaning of the action. What someone has done, indeed whether they have acted at all, depends on how this is understood, sustained, and potentially transformed by others. This is why for Arendt every action is a beginning, which is to say an occasion for others to take it up and carry it through.[22] In this sense, the meaning of a performance depends on what happens afterward. The meaning or propositional content of an action cannot be understood in terms of correspondence with a subject's intention, but is bound up with an ongoing intersubjective practice of interpretation. As a consequence, with regard to her actions, an agent cannot be sovereign.

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[21] Arendt, *The Human Condition*. For illuminating accounts of the non-sovereign character of agency, see also Krause, *Freedom Beyond Sovereignty*; Markell, *Bound by Recognition*; Markell, "The Rule of the People"; McFadden, "The Weight of Freedom."

[22] As McFadden glosses the point: "What *makes* the beginner's deed an instance of beginning, an action, then, is that others *take* it as an occasion to begin, to act, themselves." McFadden, "The Weight of Freedom," 104; cf. Markell, "The Rule of the People," 10.

The juridical example also bears out the significance of social uptake. For a judge's verdict to be a legal judgment in the full sense of the word, it must not only be pronounced, but also enacted, whether by the parties concerned, who treat it as binding by complying, or, failing that, by others entitled to enforce it. Moreover, in interpreting the judgment in certain ways rather than others, those who enact or enforce it also affect its content, twisting it, perhaps, in ways neither foreseen nor intended by the judge. Indeed, whether or not the verdict stands at all as a legal judgment depends, potentially, also on the judgment of a court of appeal. So both the content of a judgment and whether a performance counts as a judgment at all depend on social uptake.[23]

My point that judgment must make an appearance may seem to turn Arendt's thought on its head, conflating the actor who initiates a performance with the spectators who judge it. Without going into exegetical detail, it is true that Arendt does often appear to set up a dichotomy between the two: action is what essentially appears, and judgment—which she regarded as a mental faculty, apparently in accord with the tradition she called into question[24]—is what makes such appearance possible by constituting a space for it. But it is also clear, I think, that for her action and judgment cannot be understood in abstraction from one another, that they are inherently intertwined moments of the same practice. After all, if judgment did not make an appearance to occasion further responses, it would be a dead end, for "whatever lacks this appearance comes and passes away like a dream, intimately and exclusively our own but without reality."[25]

To sum up: *whether* you appropriately count as judging, and if so, what the *content* is of your judgment, let alone whether that judgment is appropriate— these are not subject to your control. This is not to say that judgment is just something that befalls you; you are involved in shaping your performance, and, of course, your own interpretation of that performance is pertinent to what you are doing. But it is not the whole story. Knowing one's judgment is

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[23] Brandom makes essentially the same point, namely that the content of performances or claims depends on their subsequent uptake, from a Hegelian point of view, and illustrates it with reference to common law. Brandom, *Reason in Philosophy*, Chapter 3; Brandom, "A Hegelian Model of Legal Concept Determination."

[24] Albeit perhaps "the most political of man's mental abilities." Arendt, *Responsibility and Judgment*, 188.

[25] Arendt, *The Human Condition*, 199. She speaks elsewhere of judgment as what "makes [thinking] manifest in the world of appearances. . . ." Arendt, *Responsibility and Judgment*, 189. The apparent tension between judgment and action in Arendt has been subject to much debate, which we need not get into here. For a more critical treatment of Arendt on this point, see Weidenfeld, "Visions of Judgment." And for an insightful recent account of the debate, see Marshall, "The Origin and Character of Hannah Arendt's Theory of Judgment."

not a matter of transparent introspection.[26] Everything depends on the on-going social and political practice of interpretation. Judging legitimacy is essentially something that one does among and with (or against) others: the authorities in question and others subject to those authorities. The intersubjective nature of judgment means that judgments of legitimacy (i.e., political stances vis-à-vis the authorities) are always interpreted from multiple perspectives, and these perspectives often differ. The way in which you understand your relation to the authorities, and the way others (not least those authorities themselves) understand that relation, can come apart. No one's perspective is sovereign, which is to say that no one has full and final say over the content and justification of their judgment. Whether a bank robbery spree is a form of organized crime or of resistance to the regime is a deeply political question. And what constitutes an apt interpretation depends also on what happens afterward—including, presumably, what one goes on to do with the money.

3.5 The space of reasons

I've proposed that we consider political judgment as essentially manifested in action. But, of course, not everything we do is a manifestation of judgment. If I cough when I look at the menu, that is not usually part of judging the restaurant. While we should avoid reducing political judgment to an "inner" mental process, we must take care also not to reduce it to observed "outer" behavior. But what makes certain things we do count as judgmental performances, and others not?

A judgment is related to ongoing activity in a way that other events and behavior are not. For one thing, it must be attributable to an agent. A sudden downpour may incline us to choose the first restaurant we see, but it would be highly unusual to attribute judgment to the weather. Still, many things

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[26] Martin artfully illustrates the problematic self-transparency of judgment with reference to Paris, who, asked to compare the beauty of three goddesses, was offered a bribe by each: "Presumably in the crucial moments preceding judgment, Paris considered *both* the beauty of the goddesses *and* the distinctive advantages of the three rewards. (Wouldn't you?) And after some period of such thinking and fretting he acted, giving the apple to Aphrodite. But nothing in that sequence of events, private and public, as yet determines the content of the judgment that was passed. Even if his inner voice pronounced explicitly 'Aphrodite is the most beautiful,' we cannot rule out that this was itself a case of motivated self-deception or rationalization, occasioned to justify the choice that would bring him Helen, whose seduction Aphrodite had already quite vividly described." Martin, *Theories of Judgment*, 160.

that are attributable to an agent do not count as a judgmental performance. Something I do counts as a judgmental performance with respect to a practice only insofar as it can be interpreted as a move in that practice. Qua judgment, the performance must have a bearing on what we are doing together; otherwise, it is not a judgment *of* the restaurant or regime. Normally when I cough, you are entitled not to give it a second thought with regard to the restaurant—unless my cough is accompanied with a meaningful frown and stare, to draw your attention to the pretentiousness of the menu.

The crucial point to recognize in this respect is that the space of appearance, the in-between in which judgment can manifest itself, is a space of reasons, not (just) causes.[27] Judgment, to be properly political judgment, must not just make an appearance. It must also be taken up in a specific way. To interpret something as a move in a practice is to situate that performance, and the one who performs it, in the space of reasons, rather than the space of causes. That is to say: judging is a rational activity.

We must tread carefully here because if we explain rationality in terms of the exercise of a specific cognitive capacity—reason, as opposed to, say, mere inclination—we fall back into the metaphysics of intentional choice that Arendt's critique of sovereignty helped us to get away from. Nor should qualifying judgment as rational be taken to imply a dismissal of the importance of affect.[28] Rather, I mean to say that judgment exhibits a certain way of relating to one another, to each other's performances, and to one's surroundings. Here, I draw on the work of pragmatists like Robert Brandom, Jürgen Habermas, and Anthony Laden, who have developed distinctively social conceptions of reasoning, where reasoning is conceived as a form of social interaction: a game of giving and asking for reasons.[29]

According to such a picture, to call judgment rational is basically to say that it is open to criticism. We can distinguish two aspects of this, corresponding to the distinction between judgment regarded as act and as content. With regard to the act, a judgment can be understood in terms of the

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[27] The notion of the "space of reasons" derives from Wilfrid Sellars. I suggest that what Sellars says about knowing also holds for judging: "[I]n characterizing an episode or a state as that of *knowing*, we are not giving an empirical description of that episode or state; we are placing it in the logical space of reasons, of justifying and being able to justify what one says." Sellars, *Empiricism and the Philosophy of Mind*, 76. For insight into the connection between the Sellarsian space of reasons and the Arendtian space of appearance, I am indebted to J. J. McFadden. See McFadden, "The Weight of Freedom," Chapter 3.

[28] Linda Zerilli persuasively argues that we should resist identifying judgment with either affect or cognition. Zerilli, "The Turn to Affect and the Problem of Judgment"; cf. Laden, *Reasoning*, 13.

[29] Brandom, *Making It Explicit*; Habermas, *Theory of Communicative Action*; Laden, *Reasoning*.

pragmatic role it has in a practice of judging. That role is that it is something one can be held responsible for: to judge is to be liable to normative assessment.[30] Recall from Chapter 2 Brandom's conception of social practice as a mutually-holding-one-another-to-account. To speak or act is to undertake certain commitments—commitments to which, from someone else's point of view, one may or may not be entitled. One way of holding one another responsible (aside from clubbing each other with sticks[31]) is to engage in discursive practice, making these commitments explicit and disputing one's entitlement to them: the "game of giving and asking for reasons." Thus to speak of the space of appearance as a space of reasons in this regard is to say, in Brandom's terminology, that judges relate to one another as "deontic scorekeepers." Such scorekeepers keep multiple "sets of books": they track and compare the significance of performances from their own perspective as well as from that of the other.[32] What is decisive here is not that a judging subject actually does manifest openness to criticism by engaging in justification when challenged, but that in treating her as judging, we take her to be capable of and committed to doing so. To be a participant, judge, or deontic scorekeeper is to have a certain normative status.[33]

This points to the second sense in which judgment is rational, or open to criticism, which is semantic rather than pragmatic. It concerns the content of judgments. We just saw that judgments are things one can give and ask reasons for. This means they are inferentially articulated: judgments stand in relations of justification to other potential judgments, or reasons. In fact, on Brandom's inferentialist theory of meaning, these inferential connections are just what their content consists in. In Brandomian terms, the question of justification asks for the articulation of "upstream" commitments in light of which someone is entitled to a commitment. Along these lines, a criterion of legitimacy is just something that counts for or against taking an authority to be legitimate in a particular situation (from some perspective). And the question of content asks for the "downstream" commitments, the beliefs and actions that a particular commitment licenses.[34] The content of a practical judgment consists in what it commits one to do, what courses of action

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[30] For Brandom, this is Kant's decisive idea: what is characteristic of judgments is that "they are things knowers and agents are in a distinctive way *responsible* for. Judging and acting involve *commitments*. They are *endorsements*, exercises of *authority*." Brandom, *Reason in Philosophy*, 32.

[31] Brandom, *Making It Explicit*, 34.

[32] Brandom, 590.

[33] Cf. Anderson, "Disputing Autonomy"; Lance and White, "Stereoscopic Vision."

[34] Brandom, *Articulating Reasons*, 193–94.

it renders appropriate and inappropriate. For example, as explained in the previous chapter, to recognize the authorities as legitimate is to undertake a range of further political commitments (dependent on the context): to support the regime in appropriate ways, to not engage in resistance, and so on.

To attribute a particular judgment to someone is thus to share a space of reasons with that person in a twofold sense: it is to practically relate to him or her in a certain way, namely as an agent and a possible interlocutor with a distinct set of commitments, occupying a distinct position in a shared practice; and to inferentially assess the content of his or her commitments, evaluating the inferences it licenses from one's own perspective, as well as the other's.[35] Reasons stand in inferential relations to one another, but are also indexed to particular individuals. The notion of the space of reasons is radically perspectival: a judgment is attributed *by* someone *to* someone.[36]

What does this tell us with regard to judging legitimacy? An important implication, for our purposes, is that judgmental contents cannot simply be read off of external behavior. If someone hangs a picture of the president over the dinner table, does this express their admiration for the regime and their recognition of its legitimacy? Or, are they merely keeping up appearances, masking their subversive activities? What is the content of their judgment of the authorities? The answer is neither fixed by their behavior, nor is it simply a matter of their subjective intention. Rather, it depends on the broader range of commitments that the person in question has undertaken. And because these commitments hang together in a certain way, to be able to grasp and evaluate them involves interpreting a broader range of their claims and actions in relation to the regime. What they are doing in putting the president prominently on display depends also on whether they distribute revolutionary propaganda at night, or read their children bedtime stories of the president's great achievements. And the significance of these latter activities may be appraised differently from different points of view. In short, a judgment can only be understood as situated in an ongoing course of action and from a particular perspective.

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[35] Here, I roughly follow Anthony Laden's apt way of unpacking Sellars's metaphor of the space of reasons. As he points out, it is a space in the mathematical sense because reasons stand in inferential relations to one another. It is also a space in the geometrical sense: a realm where each participant occupies a distinct position in relation to others. Laden, *Reasoning*, 17.

[36] Compare Kukla and Lance, *"Yo!" and "Lo!,"* 3: "[M]eaningful speech acts are fundamentally indexed to particular agents with particular stances, substantial relationships to other particular agents, and locations within concrete social normative space that are ineliminably first- and second-personally owned by this or that living, embodied subject who has a particular point of view and is capable of making and being bound by claims."

There is, of course, also the further question of whether a particular judgment, or a stance toward the authorities, is appropriate. The same points apply there, with the addition that evaluating this involves articulating the range of commitments of that person not only in the terms they themselves acknowledge, but also from one's own perspective, comparing what stance they take toward the authorities (and what they take the attendant upstream and downstream commitments to be) with one's own stance toward those authorities. As argued in the preceding chapter, for an authority to be legitimate (from some perspective) is for it to be appropriate (from that perspective) to take and treat it as legitimate.[37] The difference between an authority's being legitimate and merely being taken as such arises from the differences of perspective involved.

3.6 The space of reasons is politically constituted

The picture as developed thus far contrasts sharply with the normativist view, in that it concerns an ongoing and intersubjective practice, rather than a moment of subjective decision, and it is essentially first- and second-personal rather than impersonal. This section elaborates further aspects of this notion of judgment, explaining how our picture avoids treating norms as simply given to judgment; the sense in which judgment is historical; the sense in which it challenges a rigid separation of justification and application; and what constitutes the quality of judgments—that is, what it means to judge well. These points are all related, and a full account depends also on the analyses of the following chapters. But let me introduce the key ideas here.

In the normativist picture, a judge must treat as given to judgment pertinent facts about the situation, and norms that bear on it. These are to be supplied by activities that fall outside the scope of political judgment: empirical inquiry and moral justification. The reflective judgment approach and the pragmatist view pursued here both regard such givenness as mythical. On the reflective judgment view, the pertinent norms are enigmatically generated *ex nihilo* in a particular encounter with an exemplar. The view developed here likewise sees the relevant norms as in question at a moment of

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[37] *Nota bene*: and not just for it to be *taken* as appropriate (from that perspective). What is legitimate is not reducible to what is taken as such, but what it is to be legitimate can be explained in terms of what it is to take it as such.

judgment, but it differs in articulating how the content and justification of those norms are nonetheless bound up with ongoing practice.

On the view developed here, judging legitimacy is an ongoing practice of attunement, of attempting to get a grip on the facts and salient norms, while grappling with uncertainty and disagreement with others. That is to say, the activities through which we develop a sense of the pertinent facts and norms (whatever they might be) constitute part of what it is to judge legitimacy. Facts and norms are not treated as given to judgment; they are themselves at stake in it. And insofar as judgment is an ongoing, open-ended practice, these facts and norms are inherently open to contestation. It is worth highlighting here that there is no hard-and-fast separation in this respect between facts and norms. Both are inferentially articulated in the space of reasons. Both are part of our grip on a political situation, and this grip is not treated as given prior to judgment, but made or achieved, insofar as it is, through judging.

The key to dispelling the myth of the given lies in combining the two thoughts espoused in the preceding sections: the performative and rational character of judgment. Facts and norms are inferentially articulated; they constitute a space of reasons. But this space of reasons is not simply given. It is *politically* constituted through embodied, material practices. Our judgments, as moves within the space of reasons, affect its constitution; they alter the relevant patterns of commitments and entitlements. What counts as a reason for what depends on our concrete social practices. As Anthony Laden puts the point: "A space of reasons is essentially public, social, and shareable, and thus neither the product of individual mental structures nor merely the result of the structure of the natural world."[38] Judgment is answerable to, but also constitutes facts and norms; the space of reasons structures and is structured by judgmental activity. This means that there is no political judgment that is not mediated by judging, just as, according to Sellars's critique of the myth of the given in epistemology, there is no knowledge that is not mediated by knowledge.[39]

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[38] Laden, *Reasoning*, 17. He adds: "According to the standard picture [of reasoning], it is because the space of reasons has a fixed, objective structure that we can all enter it and it is thus public. According to the social picture, it is the public nature of the activity of reasoning that gives rise to a stable and formally structured space that we can inhabit together." Laden, *Reasoning*, 17, n. 12. See also the work of Quill Kukla and Mark Lance, who investigate "how speech acts alter and are enabled by the normative structure of our concretely incarnated social world." Kukla and Lance, *"Yo!" and "Lo!,"* 1.

[39] Sellars's point was to challenge the idea that there could be a kind of first knowledge not dependent on prior knowledge, a "given" of pure reason or pure, unmediated experience, which could serve as a foundation for justifying further knowledge. On his alternative picture, all knowing hangs

I said earlier that the space of appearance is also a space of reasons: inferential articulation and agential responsibility are conditions for a judgmental performance to appear as such (i.e., as performance). But the point also works the other way: the inferentially articulated space of reasons is performatively generated, sustained, and transformed through spaces of appearance. This point is crucial. It means that, where legitimacy is concerned, the space of reasons is politically constituted: it is generated, sustained, and transformed through the very activities that constitute political judgment.[40] And if we take this thought about the connection between the space of reasons and the space of appearance seriously, we should also recognize a further point: that the space of reasons is subject to the conditions of fragility and vulnerability that characterize political action.

These points will need to be unpacked and argued for each of the pertinent dimensions of judgment (or forms of political activity), which is what Part II of this book will attempt to do. In judging legitimacy, someone among others (subject) relates to an authority (object) in a particular setting (surroundings). Each of these aspects of political reality is subject to contestation. Let me briefly foreshadow just one of these points, about the representation of authority (Chapter 4). The key idea is a thought about the ontology of political authorities: that they are, in a sense, nothing but appearance. We never encounter the state as such, only actors (officials) playing roles. Authority appears only in virtue of being represented. Authorities exist through the things people think or say about them. What makes it possible for a regime to appear as, say, a parliamentary democracy or a police state is an ongoing practice in which representations are offered and contested. This makes authority inherently fragile. Its being relies on our continuing to portray it in appropriate ways. It only works if we stick to our roles. To treat the authorities as legitimate or illegitimate is to take part in this practice of representing authority. In this sense, judgment is not only answerable to but also constitutes its object. Construing representations of authority as given to political judgment, as theorists committed to the normativist picture tend to do, is to fail

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together; one can only know one thing if one knows many other things as well. Sellars, *Empiricism and the Philosophy of Mind*.

[40] Just as Brandom complained of John McDowell's account of knowledge as a "standing in the space of reasons" that it leaves out the crucial *social* articulation of this space, so Brandom's account must be supplemented by an analysis of the *political* forms of activity through which this social articulation is achieved (where political legitimacy is concerned). Brandom, "Knowledge and the Social Articulation of the Space of Reasons."

to acknowledge this representational nature of authorities. It is to construe their being as independent of our ongoing engagement with them. And that is a manifestation of the myth of the given: to treat as given to judgment what is at stake in it.

It is hopefully not hard to see now the sense in which judgment, on the current proposal, challenges a rigid separation of justification and application, in contrast to the normativist picture: contingent aspects of political situations, such as representations of authority, identities, and events, affect not just the conditions of application for independently justified principles of legitimacy; they affect the very content and justification of salient criteria in a particular situation.

Finally, this picture of judgment enables us to offer a different conception of the quality of judgments of legitimacy. What is it to judge well or poorly? We can see now that this has two interrelated dimensions: in addition to the content and justification of a judgment—how the judgment fits inferentially in the space of reasons—we should attend also to its form, the way it makes its appearance. In other words, where the normativist picture attends only to the propositional content of our judgments, our picture also calls attention to our modes of involvement in a situation. The content and justification of criteria are mediated by political activity. And they are therefore also subject to the conditions of such political activity. The picture of a theory of legitimacy as consisting of criteria specifiable in abstraction from these activities thus appears deeply problematic.

The point here is not just that meaning is contextual, but also that it is constituted through and bound up with certain forms of involvement in a situation. Good judgment comes to be seen as a matter of the ways in which we experience and respond to various aspects of political reality—whether one displays, for example, awareness of the contestability of representations, identities, and events; openness to criticism; responsiveness to others; sensitivity to changing circumstances; and acknowledgment of the limits of one's grip on reality. We shall have to explore this further in the chapters that follow.

3.7   Conclusion

The conception of judgment proposed here casts judging legitimacy not as a matter of applying pregiven norms to a set of neutral facts, nor as an

episodic interplay of a mental faculty with an exemplary object, but as a practice of attunement to salient aspects of political reality. It contrasts with the normativist picture on each of the characteristic features highlighted in Chapter 1. Judging is an ongoing, historical, first- and second-personal performance. It matters crucially who judges, where and when. Facts and norms are at stake in judgment, rather than given to it. This is not to deny that criteria may play a significant role in judging well, nor to assert that it is impossible to make them explicit, but to suggest that the quality of judgments cannot be reduced to their propositional content, but is a matter of how they are performed, how they make their appearance as part of an ongoing activity. What it is for judgment to go well or poorly is understood as depending on our modes of involvement in a situation, on the ways in which we experience and respond to various aspects of political reality, rather than our possession and subsequent application of the correct normative-theoretical and factual knowledge.

PART II
JUDGMENT IN THE FACE OF AUTHORITY

4

Portraying Power

4.1 Introduction

Rulers tend to make themselves inescapably visible. Via ceremonies, celebrations, speeches, sculptures, effigies imprinted on currency, or portraits hung over the dinner table, distant rulers figure in the daily lives of their subjects.[1] A ruler must show his or her face. More precisely, the powers that be must show *some* face: it may be that the public persona of the leader obscures the puppet master behind the scenes, but the puppet master cannot do without a puppet. Subjects can take these self-presentations at face value, and see their leaders as the representatives of the nation, guardians of the revolution, or defenders of the peace that they purport to be.[2] But they may also take the public face for a mask that veils the true nature of the regime. The art of ruling is, in part, the art of representing power—rendering it visible or invisible, making it appear in one way rather than another—and the art of resisting it is the art of making it appear in a different light.

The platitudinous nature of this observation notwithstanding, it is a truth that theories of legitimacy nowadays rarely take stock of. To be sure, no one would deny that the way in which authorities are appropriately portrayed is pertinent to their legitimacy. On many accounts, whether the authorities are accurately represented as a parliamentary democracy or a police state makes a world of difference. But in what way, exactly, does the representation of authorities bear on their legitimacy? How should we understand the relation at the conceptual level between representing political

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[1] Speaking of postcolonial Africa, Achille Mbembe writes: "It is not unusual to find the effigy of the head of state in or around people's houses, a part of the furniture as well as a decorative object. It is found in offices, along avenues, in airport terminals, in police stations, and in places of torture. It is always near. One wears it. It is on people's bodies, as when women wear the party's cloths. In this way, and with great attention to detail, the apparatus of state finds ways of getting into its subjects' most intimate spaces." Mbembe, *On the Postcolony*, 121.

[2] Rodney Barker observes that rulers care about their appearance not just in the eyes of their subjects, but perhaps even more so in their own eyes. Barker, *Legitimating Identities*.

authority in one way or another, and judging it to be legitimate or illegitimate? How, in other words, should we conceive of the relation between judgment and its object?

While the question is not usually posed in these terms, the default view of judging legitimacy as the application of given norms (expounded in Chapter 1) does have an implicit response to it, which is to say that adequate representation of the authorities comes *prior* to judging their legitimacy. We must first attain a grip on political reality if we are to evaluate it correctly. The authority in question needs to be represented accurately so that it may be seen whether the conditions for legitimacy hold in this particular instance. Thus construed, how the authorities ought to be represented and whether they are legitimate are separate issues. Accurate description is prior to normative evaluation. On the picture just sketched, it seems that the question of representation could, in principle, be settled on normatively neutral terrain, before we get into more contentious territory of criteria and judgments of legitimacy. Yet in struggles for legitimacy, the portrayal of the authorities is typically hotly contested. Can theoretical and practical judgment be so neatly separated?

The present chapter proposes that we see the activity of portraying power as not merely enabling but constitutive of judging legitimacy. That is to say, one way in which the question of legitimacy manifests itself practically is as a question of how the authorities are to be portrayed. So how authorities are appropriately represented and whether they are legitimate are not distinct questions. If this makes sense, it has profound implications for what it means to judge well: the quality of judgments cannot be understood just as a matter of applying valid criteria to the facts at hand. Getting a grip on the facts at hand is part of the practice of judging legitimacy, not preliminary to it. The question then becomes: How to perform that well?

4.2 Preliminaries: The concept of representation

The concept of representation is indispensable here, but the word is also highly ambiguous. What interests me in this chapter is the representation of the authorities to those subject to them, not the representation of the people by the authorities. The question is not whether and how authorities represent the people, the nation, or the public interest, but how the powers that be are represented *to* and *by* those they rule—*as*, say, an arm of global imperialism

or a parliamentary democracy, a worthy elite or a gang of thugs.[3] Of course, authorities are often represented (portrayed) as representatives (agents) of those subject to them. But there are two different senses of representation at work in the preceding sentence, and these point to two different forms of political activity. At an abstract level, both senses involve rendering present in some sense what is absent in another sense.[4] Still, we need to distinguish analytically between acting-for-others, as the elected represent their voters and lawyers their clients, and portraying-something-*as*-something, like the way a picture represents what it is a picture of.[5] The latter sense is central here.

The notion of portrayal has strongly visual connotations, but I mean to include also discursive representations: the speeches and proclamations made by rulers themselves, and anything that is said or thought about them.[6] Believing that the king is a bastard, denying that he is answerable to the pope, and classifying him as a monarch or a tyrant are ways of representing his rule in one way rather than another. The claims we make or thoughts we have about the powers that be represent those powers as being the way we take them to be. Our focus here, then, is on portrayals of power, whether visual or discursive.

In West Germany, "loyal citizens" and "urban guerillas" disagreed over the very nature of that authority. At stake was, in part, whether the terms in which authority presented itself—a parliamentary constitutional democracy—were an adequate characterization of the relations of power that subjects actually faced. Was it a "resilient democracy" or a "police state," or is neither of these terms adequate? Characterizing authority in a particular way warrants the application of further terms, fosters expectations of its behavior, and affects perceptions of the likely consequences of one's own actions. For example, whether one views the *Bundesrepublik* as a resilient democracy or a police state will affect one's view of elections being held and of the significance of the act of voting; one might view it, say, as a form of participation in government,

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[3] There are, of course, many historical and sociological studies of the portrayal of power. Kantorowicz's *The King's Two Bodies* is a classic.

[4] This adapts Hanna Pitkin's formulation of representation as "the making present *in some sense* of something which is nevertheless *not* present literally or in fact." Pitkin, *The Concept of Representation*, 8–9.

[5] I elaborate the difference between these senses of representation in Fossen, "Constructivism and the Logic of Political Representation."

[6] Of course, this is not to say that words themselves are pictures, or that the mind works principally through representations. Rather, representing is one of the things we can do with words. See Brandom, *Articulating Reasons*, 157–83.

and thereby as an exercise of power, or as a farce that has no bearing on the actual relations of power.

To say that representations in the sense just mentioned are ubiquitous in politics is a massive understatement: representations are indispensable for how we relate to things in general, in any social context. Any object we can talk and think about has a 'face,' in that it can only appear *as* something or other. If that is right, there appears to be nothing specifically political about this sense of representation. Assuming we have the capacity to talk or think about things in general, there seems to be no particularly interesting question as to how judgment relates to its object, where political legitimacy is concerned. Perhaps that explains why this issue has received so little scrutiny. But the question is well worth our attention because, as we shall see, our conceptual grip on the powers that be cannot be taken for granted in the way we take for granted our grip on tables and traffic signs.[7]

4.3 Two initial pictures

How does the portrayal of power bear on judgments of legitimacy? It depends on how exactly one understands judgment, representation, and legitimacy. Our starting point was to say that judging legitimacy is (implicitly or explicitly) distinguishing in practice whether the authorities are legitimate, or merely purport to be so. Such judgment is exhibited in the ways in which one treats the authorities—taking to the streets, turning out to vote—and in the claims one makes about them. Let me start with two interpretations of how the portrayal of power figures in judging legitimacy that are unsatisfactory but nonetheless instructive.

The first interpretation says that to judge legitimacy just *is* to represent authority in a particular way, namely *as* legitimate or illegitimate. If one conceives legitimacy as a property that an authority has or fails to have independently of one's perspective, judging legitimacy appears to be a matter of representing it as having or lacking that property. Whether the authorities are legitimate or not is just one of the many things there are to know about them. So, in addition to being a democratically elected government or a corrupt clique, a regime might also be legitimate or illegitimate. We then need

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[7] Similar considerations lead Pierre Bourdieu to call the state an "almost unthinkable" object. Bourdieu, *On the State*, 3.

to investigate what makes an authority legitimate or not, what its sources, grounds, or necessary and sufficient conditions are. Such an account could then enable us to distinguish in practice between legitimate and illegitimate regimes, by giving us a set of indicators that allow us to infer the presence of legitimacy. This view offers a straightforward account of how judgment can go wrong: through inaccurate representation. If the election is fraudulent, and a government's having legitimacy supervenes on its being democratically elected, it is false to represent it as being legitimate. Judgment is construed here as the cognition of an object, and the quality of judgments is a matter of correspondence to reality. In short, judging is representing, representing is mirroring reality, and judging well is representing accurately.

One does not have to be skeptical about correspondence theories of truth per se to think that this fails to capture something important about legitimacy claims. This view treats political judgment as an epistemic rather than a practical matter, treating legitimacy claims as descriptions. But when a crowd yells "illegitimate" in front of a government office, should that be interpreted as a third-personal report about that government, or rather as a second-personal reproach? This view ignores the performativity and second-personal character of legitimacy claims, and thus depends on a view of the meaning of legitimacy claims that differs radically from that espoused in Chapter 2.

If the former interpretation rests on a conflation of practical and theoretical judgment, we might think that perhaps judging legitimacy is not a matter of representing at all. This second view insists that to represent the authorities is one thing, and to judge their legitimacy is a separate, subsequent issue. You and I might agree that the European Union is accurately described as a constitutional-democratic project, but disagree about whether it is therefore legitimate. The difference here is not in what we purport to *know* about the authority in question (how we represent it), but in the stance we take toward it; not in what we consider to be the facts about it, but what we take to be the appropriate norms. One must *first* determine what political power is like in a particular case; *then* judge it to be legitimate or illegitimate. We must keep these stages separate.

Legitimacy, on this second line of thinking, is not a property that authorities have or fail to have, irrespective of one's perspective on them, which can subsequently be reflected in an accurate judgment. Legitimacy is a normative *status* characterizing a practical *relation* between an authority and those subject to it. So judging an authority is not representing it *as* legitimate

or illegitimate, but taking a stance toward it *qua*, say, a parliamentary democracy or a police state. Standards of legitimacy are not sources or conditions on which a property of legitimacy supervenes, but rather norms that govern the stances that subjects ought to take toward the authorities. One might then take the task of a theory of legitimacy to be to articulate and justify such norms, and to construe judging in practice as a matter of applying the criteria provided by a theory to the case at hand. So judging, on this view, involves an appeal to two different kinds of things: moral principles and facts about the case.

How does the representation of power come into this picture? It figures in both forms of knowledge that judgment invokes. First, getting the facts about the case right can be seen as a matter of representing it accurately. Judgment must operate with a description of the situation at hand. This needs to be treated as settled, before the norm can be applied. If you hold a fair distribution of wealth to be a valid criterion of political legitimacy, you'll need to know how wealth is, in fact, distributed in the context in question. This calls for empirical enquiry. Of course, that involves judgment of a sort, too, but judgment of a different order than a judgment of legitimacy; the former is a theoretical, the latter a practical judgment.[8]

Second, representation is in play in some sense also at the level of normative principles. This is because the concepts at work in those principles must be apt to characterize the case at hand, if the principles are to apply to it in the first place. If we are to judge legitimacy at all, the same concepts must be operative in the principles provided by political philosophy, and in our empirical grasp of the particular situation. So if you take it that only the consent of the people legitimates the institution of a "state," then that standard of legitimacy is only applicable if you find yourself confronted by something that is adequately characterized as a state. This, as we'll see, is no trivial matter.

A judgment of legitimacy, conceived in this way, can proceed only when both forms of knowledge are treated as given, if only for the moment. On this picture, the representation of power is construed as prior to judgment. We can give an adequate description of the authorities in question, and the normative standards that they ought to meet, independently of our commitment

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[8] Recall Onora O'Neill from Chapter 1: "When we act we may as a *preliminary* matter have to decide how to view the situation in which we already find ourselves, and in which we seek to act: here reflective judgement may indeed be needed. But even when reflective judging is completed, and we have determined how to view the situation, we will still need to decide what to do: and that is where practical judgement does its work." O'Neill, "Normativity and Practical Judgement," 402–03.

as to the legitimacy of these authorities. The latter is supposed to follow from the former.[9]

What is attractive about this two-stage (or normativist) picture in contrast to the single stage (descriptivist) one is that it highlights both how judgment is answerable to reality, and why it is not reducible to accurate representation. If your understanding of the authority in question is inaccurate, for instance because you mistake a fraudulent election for a genuine one, then your evaluation of its legitimacy will go awry as well. Still, even if we agree that the election was fair and open, we may disagree as to the legitimacy of the resulting government, if we are committed to different principles of legitimacy (or disagree about their application in the case in question).

But if we consider the question of legitimacy from the first-person perspective of someone confronted with political power, it is striking how much must be taken as given if judgment is to get off the ground. At the level of facts, the picture asks us to treat the authorities as they are as a presence given in advance of representation. The political situation and the character of the authorities in question are epistemically accessible in a way that does not (yet) involve judging legitimacy. The facts themselves are normatively neutral, and they are present, like raw materials lying in anticipation of being taken up. The constitution of the object of judgment (political authority) is taken as independent from and prior to this moment of representation, and *a forteriori* prior to judgment. At the level of principles, it isn't the actual presence of the regime that is treated as given, but rather the terms in which it is to be represented. Ontologically and conceptually speaking, the being of authority is taken as independent of and prior to the stance we take toward it.[10] Finding out what a regime is like may be very difficult (think of the complications of finding out whether election results have been tampered with; who is really calling the shots, etc.). But the object must be treated as given, and the facts about it as settled, at least for the moment, if one is to arrive at a legitimacy judgment. As we will see in what follows, in making these assumptions, the picture takes as given much of what is practically at stake in the question of legitimacy.

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[9] This does not entail that the justification of principles is independent of *any* prior judgment of legitimacy. Particular judgments may be accorded a role in a theoretical justificatory process, as on a reflective equilibrium approach (as discussed in Chapter 1). But that process must at this stage be considered concluded.

[10] On this point, see Lefort, *Democracy and Political Theory*, 10.

4.4 The practice of representation

The conceptual framework developed in Part I enables us to rethink the relation between judging legitimacy and representing power. Recall the proposal (in Chapter 3) to conceive of judging legitimacy as a complex of ongoing activities. The idea now is simply that representing authority in the context of a concrete encounter is one such activity. In portraying power in one way or another, one partakes of a practice of judging legitimacy. A stance toward the regime is always a stance toward the regime *qua* police state, constitutional democracy, corrupt clique, and so on. How authority is to be portrayed is integral to what is at stake in political stance taking, and adopting, maintaining, and shifting one's stance is a practice of judgment. So I am proposing that we view judging legitimacy and representing authority as conceptually entwined. In contrast to the two-stage view, representing and judging are not separate activities, performed in sequence. Representation is not merely an enabling condition for judgment, but constitutive of it. By implication, for example, if one calls the European Union a constitutional-democratic project from a practical standpoint, one partakes in judging its legitimacy.

This may seem implausible, or even a nonstarter, for two reasons. First, two persons might both accept that the European Union is a constitutional democracy, and yet take opposing stances toward it. So representing a regime in a particular way does not settle the question of legitimacy. Second, we can offer representations of regimes, for instance, of historical and imaginary ones, without practically engaging with them at all, and so without judging legitimacy as I have been conceiving it. Thus, shouldn't we keep the notions of representation and judgment separate?

Two initial remarks may help to avoid misunderstanding. The first is that saying that portraying power is constitutive of judging legitimacy is not to say that judging is *reducible* to representing; as the following chapters explore, other activities are involved as well. In judging legitimacy, a subject comports themself in relation to multiple elements of their situation: not only toward the authorities in question, but also toward themself, other subjects, and the surroundings. Our sharing of a portrayal of the European Union as a constitutional democracy (or our rejection of it) does not by itself *settle* the question of legitimacy, but it does directly speak to it. Portraying power is just one aspect of the complex of activities that judging legitimacy consists in. As for the second concern, the idea is not that *all* representing is judging legitimacy, just that judging involves (among other things) representing a regime.

To make sense of the idea that portraying power is an integral aspect of judging legitimacy, and to see why it matters, we'll need a better grip on the sense of representation that is involved. This is the topic of the present section. Key here is the idea, central to the recent literature on political representation, that representation is "constructive" or "constitutive" of what is represented.[11] The next section then fleshes out what is involved in portraying *power*, specifically.

Recall that the term 'judgment' can refer to the capacity to judge, the activity of judging, and the products of such activity. Chapter 3 argued that we could understand particular judgments as moments in an ongoing practice of judging. Likewise, 'representation' can refer to products (pictures, claims), but also to the activity of making representations.[12] So we can make an analogous move here and understand a representation as something that plays a certain role in a practice of portrayal. What makes something a picture of something or a claim about something is that it is taken and treated as such.[13] In this spirit, Michael Saward has proposed that we think about representation as a practice of making *claims* to the effect that something represents something else.[14] Representing is then a process of making, receiving, rejecting, or reiterating such claims.

Adapting Saward's analysis, we can unpack the idea of a representational claim as involving six elements: a *maker* puts forward a statement, picture, or performance (*subject*), which refers to something (*referent*) and characterizes it in some specific way (*characterization*) to an *audience*.[15] For example, a painter (maker) presents a portrait (subject) of Churchill (referent) as a fragile old statesman (characterization). The representational object is complex: the referent as characterized in the representation; here, Churchill *qua* fragile old statesman. Claiming that *x* represents *y* as *z* is doing

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[11] This section draws on my analysis of constructivism in Fossen, "Constructivism and the Logic of Political Representation." See also, for example, Disch, van de Sande, and Urbinati, *The Constructivist Turn in Political Representation*.

[12] We don't ordinarily speak of representation as a capacity or faculty, although we might say that the imagination (in Dutch: *voorstellingsvermogen*; literally, "capacity to portray") is the capacity to represent things to oneself.

[13] As philosopher of science Bas van Fraassen put it: "There is no representation except in the sense that some things are used, made or taken, to represent some things as thus or so." Van Fraassen, *Scientific Representation*, 23. I am also indebted to Tim Heysse on this point.

[14] Saward, *The Representative Claim*.

[15] Saward does not clearly distinguish between representation in the sense of acting-for-someone and the sense of portraying-something-as-something. Here, we are concerned with the latter. Saward overlooks the triadic structure of such representation-as: *x* represents *y* as *z*. The notion of the characterization corrects for that. See Fossen, "Constructivism and the Logic of Political Representation."

two things: to denote or pick out something (what the portrayal is about, the referent), and to present it in some specific way—to *characterize* it somehow, or to "allege something" about it (as Hanna Pitkin put it).[16] In this respect, representation-as differs from representation simpliciter, in which *x* stands for or acts for *y* without purporting to characterize it in some distinctive way (e.g., "+" stands for addition in the context of an equation, but does not purport to characterize addition in terms of two crossing lines).

This applies to discursive as well as visual representations-of-something-as-something. In either case, what the referent is represented *as* is, of course, a matter of interpretation. Perhaps the painter meant to portray the statesman as pensive, rather than fragile. And what is denoted may also be questionable. A viewer may see that the painting depicts an old man but fail to recognize Churchill. Or, perhaps they take the painting to say something about the state of Britain as a whole, not just Churchill. Portrayals are contestable both as to what they denote and how they characterize it.

We now have all the ingredients needed to unpack representational claims about the authorities. Here are a few examples:

1. President Morsi's (maker) speech (subject) represents him (referent) as the fairly elected president (characterization).
2. El-Baradei's (maker) tweet (subject) represents President Morsi (referent) as the new pharaoh (characterization).
3. The Red Army Faction (maker) issues a communiqué (subject) to the general public (audience) according to which the *Bundesrepublik* (referent) is an arm of global imperialism (characterization).
4. The demonstrator's (maker) sign (subject) among the crowd (audience) represents the Dutch monarchy (referent) as undemocratic (characterization).

Consider the elements in turn:

- The *subject* is a claim of one form or another; a statement about the authorities, a picture of them, or a performance by them.
- The *maker(s)* and the *audience* are political actors engaged in a stance-taking practice, making, interpreting, contesting, and reiterating claims

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[16] Pitkin, *The Concept of Representation*, 68–69. For a useful analysis of representation-as, see Goodman, *Languages of Art*, 27–31.

about the authorities. This may include officials themselves, like Morsi in the first example.

- The *referent* is what is purportedly denoted and characterized by the representation. In these cases, it is some form of purported authority. The referent can be mentioned or named in some way in the claim, but the referent itself is something that might also be characterized differently.
- The *characterization* is how the referent is to be perceived, according to the representation; what it is represented *as*.
- The *object* of the representation is the referent *as* characterized in the representation, for example, the *Bundesrepublik* qua arm of global imperialism. In representations-as, the object is complex: it denotes and characterizes the referent.

The idea that representation is constitutive of the represented must be treated with care, because as stated, the idea is highly ambiguous. In representation-as, there are two distinct senses of "what is represented": the referent of a claim and its object. Let me distinguish three increasingly far-reaching senses in which representing-something-as-something (*x* represents *y* as *z*) might be taken to constitute the represented. First, representation is constructive in the trivial sense that it constructs a representation. It shapes what kind of representation it is, what the referent is represented *as*. In this sense already, representing is a creative and imaginative process. For the claim to succeed at this, the audience must come to see *y* as *z* 'within' the representation offered. This is the weakest sense in which a representational claim is constructive; it posits a *z*-picture, and connects it to *y*. In other words, it constructs a representational object. For example, a newscast might portray an election as a massive victory for the president, even though it was, in fact, a fraud, and the audience recognizes that the network represents the president as having won, without necessarily buying into it.

A stronger sense in which representation-as can be constructive depends on how the representation of *y* as *z*, interpreted as such by the audience, is taken up by the audience: whether it is accepted as characterizing *y* in the broader practical context in which the representation is offered, independently of the particular representational claim. In that case, the portrayal is constructive not just of how *y* is seen in the representational object, but also of how *y* is subsequently taken and treated by the audience. For example, the audience not only sees that the news portrays the president as having won the election, but also comes to believe and accept that the president has done so.

In both these senses, representational claims constitute appearances: the appearance of y as z in the representational object; and in the perception and the activity of the audience. The difference between these cases can be understood in terms of the commitments attributed and undertaken by the audience. In the first instance, they attribute a commitment to take or treat y as z to the maker of the representational claim; in the second, they also undertake such a commitment themselves.

Of course, it is one thing for y to be seen or treated as z, and another for it to *be* z. The election might be portrayed and accepted as a genuine win for the president, even though it was, in fact, fraudulent. More radically, representation-as may sometimes be said to constitute the *referent* also, when the thing denoted comes to *be* what it is represented as, in virtue of being represented as such. To make this intelligible, we need to shift our focus from the individual representational claim and its subsequent uptake by the audience, to the ongoing practice of portrayal. This allows representation to feed back into the referent. For example, a self-conscious king might, after seeing a portrait of himself as a majestic figure, gain confidence, adjust his posture, and comport himself differently, becoming majestic indeed. For this, it is crucial that the referent is practically related, as part of the audience and as a maker of further representational claims, to the ongoing practice of portrayal.

So "what is represented" can be both in some sense prior to representation and constructed in it. Any particular act of representing-something-as-something still purports to denote some referent that is logically prior to it. But whatever figures as such may well be ontologically or genealogically dependent on the ongoing practice of portrayal. Arguably, political identities, interests, roles of representative and constituency, and indeed election results are constructed through ongoing practices of portrayal in a similar way; these phenomena depend for their existence on an ongoing practice of being taken and treated *as* such-and-such. That, I take it, is the key insight of constructivist theories of representation.

4.5 Faces of power

Something thus far escapes our analysis. How does power enter the picture? It does not appear as such in any of the representational claims mentioned. We get names and labels for agents and institutions that are then characterized in

a particular way. There is something intangible about power, and we need to explore its relation to representation further.

The concept of power refers to the ways in which others open and close practical possibilities for us and structure our practical horizon, and we theirs. Chapter 2 proposed that we conceive of authority as power with a face, making a claim. Authority is represented power; power that operates through being represented. The account of representation offered in the previous section rejects a dualism of power and representation, according to which power has a reality prior to and underlying the struggle over its portrayal. That means that, in the context of a concrete encounter, portraying power by making, receiving, rejecting, or reiterating representational claims is also enacting power. Representations of power purport to denote, characterize, and thereby contribute to constituting or dissolving the 'powers that be.'

This brings us to the key point, which is about the ontology of authorities: that they are, in a sense, nothing but appearance, that is, reiterated portrayals. The authorities exist qua authorities that they are in virtue of being represented as such.[17] If political authority is, by its nature, represented power, and if representing power is part of what we do in judging the regime, then we end up with a variation on Kant's thought that judgment constitutes its object. But here that is due not to the transcendental conditions for the appearance of any object as such (how claims refer to objects rather than mere appearances), but to the political conditions for the appearance of power as authority.

The point should not be overstated. That the *practice* of portrayal—the ongoing interplay of making and receiving representational claims—constitutes its object, authority, does not mean that an individual act of portraying power in one way or another simply makes it so. A news report cannot constitute a fraudulent election result as a genuine victory for the president. Rather, such an act is a move in a practice of representation in which things are taken and treated *as* signifying this-and-that (as voting, counting, reporting, etc.). And this makes the very fact that there is an election at all somewhat precarious

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[17] This is arguably the crux of Hobbes's *Leviathan*. At the very outset, Hobbes says: "For by Art is created that great Leviathan called a Common-wealth, or State, . . . which is but an Artificiall Man" (*Leviathan*, 2:16). Hobbes's idea (in the *Elements*) that the body politic is "fictitious" tells us something about the nature of this art: it is brought into being by imagining it. And this is the very activity in which Hobbes himself is engaging in writing *Leviathan*. Hobbes is not simply describing the state, but trying to make us believe in it, thereby conjuring up the artificial man. As Robin Douglass put it, Hobbes sought "to cast the fiction of the body politic upon the imaginations of his readers." Douglass, "The Body Politic 'Is a Fictitious Body,'" 127. For a contrary reading, see Olsthoorn, "Leviathan Inc."

since it is only in virtue of this ongoing taking-and-treating-*as* that there is truly an election. Likewise, you cannot change the nature of the authorities you face by imagining they are different; it would be mad to think that power can be wished away or changed at whim. The form of power can be challenged and transformed by imagining it differently, but not unilaterally. Nor is the idea here to deny that there is a material dimension to the practice. Bullets fired into a crowd have a material reality and effects. The point is that their being fired only appears as action of the regime (or the opposite) in virtue of a practice of portrayal; and the regime only appears *as* the authority it purports to be—a parliamentary democracy, worthy elite, what have you—in being taken and treated as such. This means also that authority is fragile; it requires ongoing portrayal.[18]

The triadic structure of representational claims implies that there are two related but distinct aspects to the problem of representation. As noted above, portrayals are questionable both as to what they denote and how they characterize it. So on the one hand, we have the problem of characterizing relations of power: what the regime is like. Characterizing a regime is largely a matter of representing what the regime does, what it has done, and what it will do. And since what the regime does includes offering and responding to portrayals of itself, what the regime is like is not independent of how it is characterized. Whether Morsi was aptly portrayed as having declared himself a "new pharaoh" depends partly on what he would go on to do with his newly appropriated powers, and on how his regime would respond to this kind of reproach. On the other hand, there is the question of what a representational claim refers to: whether it successfully denotes a salient element of the constellation of power in the relevant context. The issue here is whether a representation is appropriately taken as a representation *of power*. There is always a question to whom the question of legitimacy is appropriately addressed. I will briefly elaborate these aspects in turn.

Take the slogan that epitomized the Arab uprising: "The people demand the fall of the regime." What is it to speak of a "regime" here? Did the removal of Mubarak from office also mean that the Egyptian "regime" had fallen, as "the people" had demanded? Did the regime comprise just Mubarak and

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[18] James Martel makes the same point in an Althusserian vocabulary: "The systems of authority that are produced by interpellation are not just 'there,' an ongoing and permanent feature of the political landscape; they are rather the results of an active and continuing set of productions that must occur each and every day. . . . Thus, any break in the circuit can bring down the whole edifice of power and authority that interpellation produces (which helps explain why very often long-lasting regimes collapse very quickly." Martel, *The Misinterpellated Subject*, 92.

his ministers, or also the bureaucracy, the governing party, the security services, the army? These issues were of profound practical importance. Consider a pivotal moment in the uprising against Mubarak: the "battle of the camel" at Tahrir Square. A group of men on camels violently stormed the square occupied by protesters. The camel riders are often described as "thugs" hired by Mubarak's governing party and therefore as an arm of the regime.[19] At the same time, the army, which stood idly by, was by and large *not* held responsible for what happened, and indeed was taken by many of the demonstrators to be on their side, in opposition to the regime they were toppling: "the people and the army are one hand."[20] If one accepts this representation, then indeed one should say that Mubarak's resignation and the military's taking charge amounted to a regime change (though perhaps not exactly the one demanded by the people).[21] Yet in the months that followed, persistent demonstrators emphasized the continuity between Mubarak and the military council that followed in his wake. To them, the army leadership was part of the same corrupt clique as the fallen president, and the change of regime was merely cosmetic: "The gang is still ruling."[22] In the words of one activist: "If we still have a police state, if we still have emergency law, if we still have the constitution pretty much the same as it is, then if we had an election in six months' time, the situation would pretty much be the same; because the tools of the state remain the same."[23]

This example illustrates that the question of how to characterize power has two intertwined aspects. You can ask of any particular act you encounter whether it is an act performed on the part of the regime. And you can ask how the regime is aptly characterized as a whole. At the general level, the political order as a whole appears as having a certain face (or, as it might be, a facade): the regime is made to appear as, say, a police state or a government of the people. But authority has a face also in the guise of the persons one encounters in concrete interactions—not just political leaders but especially the more mundane police officers, immigration agents, civil servants,

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[19] Fathi, "Egypt's 'Battle of the Camel.'"
[20] Khalil, "The People and the Army Are One Hand."
[21] According to Joshua Stacher, after Mubarak's fall the position of the army changed so significantly that we can indeed speak of a new regime. Under Mubarak the army was one among several factors of power (next to Internal Affairs and the NDP) that were more or less equal, whereas after Mubarak the state apparatus as a whole became more militarized. Stacher, "Deeper Militarism in Egypt."
[22] "Trials, Trials . . . the Gang Is Still Ruling."
[23] Khalid Abdalla in Noujaim, *The Square*.

and hired thugs.[24] There is always a question of how those officials (or un-officials) relate to the wider political order. These two questions are distinct but closely related. On the one hand, you see a person with a stick on a camel *as* an agent of the regime, and the army as separate from it, against the background of certain presuppositions about the nature of that regime and expectations about its behavior. On the other hand, your interactions with particular agents can shape your conception of the regime as a whole. Only by interpreting the actions of particular agents as actions on the part of the regime as such, or, alternatively, as mere incidents, steps out of character, can we attribute intentionality and responsibility to the regime as such.

Besides attributing actions to it, characterizing the regime also involves naming and labeling it. This raises a further issue of contention because disputes about what a regime is like often involve disputes about the very meaning of the terms in which it is represented.[25] Consider, for example, the protest at the inauguration of Willem-Alexander at Dam Square (introduced in Chapter 2). Joanna's companion carried a sign that proclaimed, "No monarchy but democracy" superimposed on the Dutch national flag. This casts as mutually exclusive what, on the self-presentation of the Dutch political system, is compatible: (constitutional) monarchy and (parliamentary) democracy. Apparently, the demonstrators take it that one can only speak of the regime as genuinely democratic if the monarchy is completely abolished. A defender of the current system could counterpose that a merely ceremonial king is no true monarch, and that the demonstrators are positing a false opposition. So part of what is at issue here is the meaning of basic political concepts such as "democracy" and "monarchy." The practice of portraying power is also the practice of fleshing out the meaning of such terms. In political stance taking, our political concepts are at issue in a way that concepts such as "rook" and "queen" are not while playing chess.

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[24] Bernardo Zacka draws our attention to these face-to-face interactions: "For all the emphasis that theorists of the modern state have placed on its impersonal character—on the separation between person and office—the state, when we encounter it, does have a face. It is the face of a very particular person, one that changes with every procedure and agency. It is a face we can grow to appreciate or to fear, one whose expressions we scrutinize closely and whose reactions we try to anticipate; one we try to please, sway, or distract; one to whom we express our gratitude or vent our frustration. . . . If we are lucky enough to belong to those segments of society who do not directly depend on the state, it is a face that can make or break our day. If we are part of society's most disadvantaged groups, it is a face that can make or break our lives." Zacka, *When the State Meets the Street*, 240.

[25] "[W]hat we see and what is there for us to see will depend on the concepts we bring to our experience. For actions and relationships and feelings and practices and institutions do not walk up to us like elephants and stand there, gently flapping their ears, clearly distinct from their surroundings waiting to be inspected and named." Pitkin, *Wittgenstein and Justice*, 115.

Finally, let us briefly turn to the issue of to whom the question of legitimacy is to be directed. Concerning any representation, one can ask not only how it characterizes its referent, but also what (if anything) it denotes. In our case, the pertinent question would be: Is it a face of power or a mere facade? This raises the question: What makes a representation a representation *of power*? In the context of struggles for legitimacy, it is normally taken for granted and left implicit that what is named and characterized as an authority represents a salient element of the actual constellation of power. Acts of portrayal such as those mentioned in the previous section take place against the backdrop of a prior understanding of the relevant relations of power that remains implicit. Implicit in the demand that Morsi step down, or that Mubarak's regime must fall, or that the monarchy is undemocratic, is a claim that these names and definite descriptions denote salient elements of the constellation of power; and that they are the proper object of legitimacy claims. Yet this cannot simply be taken for granted.

Take the change of the constitution that was the occasion for Mohamed El-Baradei to tweet: "Morsi today usurped all state powers and appointed himself Egypt's new pharaoh."[26] Since his election, Morsi had been engaged in a struggle for power with other agencies, especially the armed forces and the judiciary, and perhaps even the leadership of his own organization, the Muslim Brotherhood.[27] His controversial appropriation of powers was necessary, in his own eyes, in order to establish unity of rule under his control. The president's official powers had, just prior to Morsi's election, been significantly reduced by the army leadership. More pertinently, Egypt's political system during the era of Mubarak is often characterized, also by Morsi, as a "deep state." Its tentacles extend into all layers of society, each with its own more or less independent nerve center.[28] Even after Morsi's election, "there remained the tails and claws of [Mubarak's] regime."[29] So there is a question whether Morsi ever effectively became the "head" and attained a significant hold of the nerve centers of power, as the image of a pharaoh suggests. In fact, the same question can be raised with respect to Mubarak himself, if one takes seriously army major Haytham's allusion, in the film *The Square*, to the army's hand in the 2011 uprising. To the question "Did the Army protect

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[26] Spencer and Samaan, "Morsi Grants Himself Sweeping New Powers."
[27] A popular representation of power had it that Morsi was not in charge at all, but that he was a puppet of the Muslim Brotherhood.
[28] El Amrani, "Sightings of the Egyptian Deep State"; "President Morsi's Post-Coup Speech."
[29] "President Morsi's Post-Coup Speech."

the revolution?," he responds: "We didn't protect the revolution, we made it happen. You kids don't know anything [laughs]."[30] There is a genuine question, therefore, to what extent Morsi (or *any* president, for that matter) was ever "in power" to begin with. To what extent does the constitution give an adequate representation of the relations of power? What if the official, procedurally legitimated order is a mere facade?

What this shows is that we cannot just take for granted that the explicit play of legitimacy claims and counterclaims captures the relations of power behind the scenes. The unity that we attribute to the relations of power in which we find ourselves, by speaking of the "state" or the "regime," is not simply given, but is potentially in question and must be made or achieved. That raises the fundamental issue of whether the question of political legitimacy is appropriately addressed to the president, or the king. And if not, that would mean, not simply that the relations of power fail to live up to the posited standards of legitimacy (for instance, the democratic mandate prescribed by the constitution), but that those standards fail to get a grip on the situation to begin with.

If this is right, it has a further important implication. One does something quite different when portraying a regime from an external standpoint than in a concrete encounter with it. A participant's portrayal is involved in the relations of power it represents. It is a representation *of* power both in the sense of what it is about, but also in the sense of what it consists of or partakes in: a portrayal is itself a power play. But not every representation of a regime is *ipso facto* a representation of power in this double sense. An external observer's portrayal is not operative in the very context in which the representational claim is made; it does not enter the same field of power relations. Thus, there is a crucial difference between a portrait of a presently ruling leader on display over the dinner table, and a painting of a long deceased one in a museum. In the latter case, the label might tell us that the portrait is of a historical figure who was once in a position of authority. But it cannot now be taken to denote actual power, since the power relations in which it once may have figured as such are no longer at play. Whether a portrayal is to be considered a representation of power is not a matter of the properties of the artifact, nor is it apparent in the surface structure of a representational claim. It rather depends on how that portrayal figures in the context of an encounter between subjects and authorities. In the case of a portrait of a monarch from

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[30] Noujaim, *The Square*.

a long-gone age on display in a museum, what is denoted makes no political claim on us. It is just a picture of a dead king or queen, the residue of a past stance-taking practice. (Unless, of course, the historical ruler still figures as a symbol of the current regime. The decisive point is not whether the person depicted is dead or alive.)

4.6 Judging well

Thus far, we have examined the conceptual relation between judging legitimacy and portraying power. I proposed that we see the latter as integral to the former. Portraying power, from a practical standpoint, is not a preliminary to judgment. It is not merely an enabling condition for taking a stance, which itself remains normative neutral ground. The form that power takes, in our situation, is at the heart of what is at issue in a struggle for legitimacy. To portray a regime differently than it portrays itself, while confronted with it, is not just to offer an alternative description of it, but a second-personal reproach.

This tells us something about what is at stake in judging legitimacy. The question of legitimacy is, in part, a question of what the regime is like. But what does it mean to judge well in this regard? The point here is not to try to specify, in lieu of criteria of legitimacy, criteria for judgments of legitimacy. Chapter 3 suggested that we think about the quality of judgment not just in terms of the contents of particular judgments, but in terms of the form of the activity of judging—the ways in which we experience and comport ourselves toward political reality. So the question of good judgment appears here as a question about the form of the practice of portrayal. What does it mean for that practice to go well or poorly? This is a large question, and here I am only able to offer some tentative reflections.

4.6.1 Responsiveness

One way to begin thinking about this is to return to the normativist picture of judging legitimacy and examine the form of abstraction it performs. What gets lost in an approach to legitimacy that renders representation prior to judgment? Section 4.3 noted that normativism treats the representation of power as given to judgment, in a double sense. At the factual level, it treats

authorities as unambiguously present qua authorities that they are, prior to and independent of our judging. And at the normative level, it treats the terms in which power is to be understood as given to judgment. But if we consider representation as integral to judgment rather than prior to it, then this is to take as given what is politically at stake.

This myth of the given is visible most clearly in theories of legitimacy that treat the object of legitimacy claims as a mere terminological matter. The theorist postulates a definition of, say, the state, government, or law, or perhaps a classification of regimes, and then proceeds to the 'real' philosophical issue: What are the criteria for its legitimacy? Take Robert Paul Wolff, who defines the state as "a group of persons who have the *right* to exercise supreme authority within a territory. The discovery, analysis, and demonstration of the forms and principles of legitimate authority—of the right to rule—is called political philosophy."[31] Here, the concept of the state appears as given even before political philosophy gets started. But what makes the posited definitions of the state apt, to begin with? How does the concept get its purchase on relations of power? In virtue of what do principles of legitimacy resulting from this enquiry get their grip on a situation where legitimacy is in question? Nothing, really, except the postulated meaning of the terms.

David Estlund, to take a more recent example, is quite explicit that a philosophical account of legitimacy does not need to engage with the way in which power appears in concrete situations:

> [B]rute power is not a moral thing. Like a knife, it can be used rightly or wrongly. The moral questions about the use of knives are not much about the details of what knives are like, and the moral questions about the uses of power are not much about the exact nature of actual power.[32]

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[31] Wolff, *In Defense of Anarchism*, 5. David Copp spends a bit more time on "the idea of a state" and concludes: "The state is the system of animated institutions that govern the territory and its residents, and that administer and enforce the legal system and carry out the programs of government." Copp, "The Idea of a Legitimate State," 7. Thomas Christiano's entry on 'authority' in the *Stanford Encyclopedia of Philosophy*, which is "concerned with the philosophical issues that arise in the justification of political authority," raises a number of moral questions about "the state," but never examines the notion. Fabienne Peter's entry on 'political legitimacy' goes a bit further, raising "the question which political institutions are subject to the legitimacy requirement" in light of the challenge of globalization: "This raises the question how the concept of legitimacy may apply—beyond the nation state and decisions made within it—to the international and global context." Christiano, "Authority"; Peter, "Political Legitimacy."

[32] Estlund, *Democratic Authority*, 2.

There is thus no apparent need, for the purposes of a theory of legitimacy, to attend to the specific form that power takes in a particular context. The pertinent definitions can be settled in the abstract. But Estlund's simile of power as a knife already invokes a specific and contentious representation of how power operates: as an instrument that is itself normatively neutral and is wielded intentionally by an agent.

Compare these definitions to Václav Havel's description of the "post-totalitarian" regime in which he found himself:

> [T]he conflict between the aims of life and the aims of the system is not a conflict between two socially defined and separate communities; and only a very generalized view . . . permits us to divide society into the rulers and the ruled. . . . In the post-totalitarian system, this line runs de facto through each person, for everyone in his or her own way is both a victim and a supporter of the system. What we understand by the system is not, therefore, a social order imposed by one group upon another, but rather something which permeates the entire society and is a factor in shaping it. . . .[33]

If Havel's portrayal of power in communist Czechoslovakia is apt, then Estlund and Wolff's theories of legitimacy fail to even apply in that context to begin with because they are about something of a different kind. Achille Mbembe makes a similar point about power in postcolonial Africa:

> The postcolonial potentate was thus itself a form of domination that, while using universal techniques (a state and its apparatus), had its own internal coherence and rationality both in the political-economic realm and in the imaginary. It follows that the potentate's domination must be judged in relation to that rationality and not on the basis of some normative Weberian model that nowhere exists.[34]

In contrast to Wolff and Estlund, Havel and Mbembe treat the representation of power as a problem that is integral to their enquiry. Of course, their portrayals may also be disputed.[35] But the point is that purporting to

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[33] Havel, "The Power of the Powerless," 37.
[34] Mbembe, *On the Postcolony*, 44.
[35] Other critics of the Czechoslovakian regime characterized it precisely as a corrupt elite ruling for its own benefit, which would fit better with Estlund and Wolff's definitions. Glasius, "Dissident Writings as Political Theory on Civil Society and Democracy."

settle this by postulating a definition obscures much of what is at stake. The problem isn't just that Wolff and Estlund treat as an uncontroversial starting point what are, in fact, contestable empirical assumptions. *That* problem might be addressed simply by substituting different, less contentious premises (e.g., a broader definition of power or a different definition of the state), or by buttressing those premises by further argument. The deeper problem is that this way of theorizing legitimacy fails to even register the representation of power as a central concern.

The issue here is not that Wolff and Estlund aren't judging at all: their proposed definitions also partake in the practice of portraying power. After all, those definitions are meant to apply also in the political situation in which they find themselves, and their theoretical contributions are also in some sense political interventions. The problem is rather that they engage in judgment while, in effect, denying that they are doing so. The manner in which they engage in that practice fails to acknowledge its own practical involvement. Instead of treating the problem of representation as a problem to grapple with, they treat it as a preliminary, to be sorted out before the real enquiry gets started.[36] In treating the object of judgment as ontologically and conceptually given, normativism abstracts from the ways in which that object is politically constituted and from the ways in which the terms in which it can be understood are themselves politically at issue. This takes as given much of what is at stake: that our concepts have purchase on power, and that they retain that purchase irrespective of shifts of context or practical perspective.

What we see here, I submit, is a lack of what we might call *responsiveness* to the conditions of one's own judging. By responsiveness, I mean a reflexive mode of relating to one's own judgmental activity, one that does justice to the inherent questionability of what is being judged and acknowledges judgment's own involvement. Good judgment calls at the very least for acknowledging that there is a problem, and not the kind of problem you can solve and be done with.

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[36] It should be granted that many normative theorists are more attentive to the problem of representation than Wolff and Estlund. This is particularly true of theorists who see principles of legitimacy (or, more typically, of justice) as "practice-dependent." On such an approach, the content and justification of principles that apply to a practice or institution depend on the point and purpose of the practice or institution in question. Yet practice-dependence theory still casts the task of interpreting that point and purpose as a theoretical enterprise, and authority as an object whose presence is unproblematic and given prior to judgment. For example, Sangiovanni, "Justice and the Priority of Politics to Morality"; Sangiovanni, "How Practices Matter"; Rossi, "Justice, Legitimacy and (Normative) Authority for Political Realists."

4.6.2 Truthfulness and virtuosity

Besides responsiveness, what modes of involvement in a situation does judgment call for? A compelling account of good judgment will need to accommodate two ideas. On the one hand, representation purports to be answerable to how things are with the regime in question. A portrayal is apt in this sense if it enables the audience to see the authorities for what they are. This points to the virtue of *truthfulness*—doing justice to the way things are. On the other hand, as argued in the preceding, representation is creative. Let us call the quality or excellence of such creative performance *virtuosity*. Truthfulness and virtuosity appear contradictory: insofar as representation is constructive of what it represents, it is hard to see how it could be answerable to it. The challenge, then, is to offer an account of representation as answerable to political reality without denying its creativity.

The contradiction arises if we interpret truthfulness and virtuosity as requirements on the contents of particular representations. Truthfulness then appears to be a matter of correspondence to something pregiven, while virtuoso creativity would appear as the generation of an exceptional appearance *ex nihilo*. When x represents y as z, it seems that the z must correspond to or confirm what y *already* was; *and* that x makes it so that y is z. But the apparent contradiction dissolves if we think of truthfulness and virtuosity not as requirements on the content of our representations, but as distinct but complementary virtues of our involvement in the practice through which such content is generated—without denying they can come into tension. The notion of judgment proposed in Chapter 3 enables us to do just that because it shifts our focus from the particular moment of decision to the form of the activity of judging. This also fits well with thinking of representation as an ongoing practice of making, receiving, and reiterating claims.

Seen in this light, truthfulness and virtuosity are not diametrical opposites. Representing power is a matter of getting a grip on what the regime is like, but also of shaping (though not, of course, unilaterally) what the regime is like. There is no logical contradiction between trying to do justice to the way things are while creatively partaking in shaping them. Rather than an antinomy between pure receptivity and sheer spontaneity, elements of receptivity and spontaneity are entwined within truthfulness and virtuosity.[37]We

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[37] For a parallel argument, in somewhat different terms, see Lindahl, "Authority and Representation," 239–40.

can see the entwinement of receptivity and spontaneity in truthfulness if we consider the role of evidence in judgment-qua-representation. Insofar as what a regime is like is a question of what the regime does, portraying power involves interpreting and disseminating evidence of actions on the part of the regime. Jehane Noujaim's film *The Square*, which tells the story of the fall of Mubarak and Morsi from the perspective of some of the revolutionary activists, shows a fragment of a televised post–Mubarak but pre–Morsi conversation between a young man and woman and a government official, General Hamdy Bekheit. The youth confront the general about the army's violence toward protesters. The young guy shows the general his laptop: "This is a picture of a friend who took a bullet in his leg." The general responds: "This is not an army bullet [looking away]. It doesn't look like one." The salient point here isn't whether the general's statement is true (which, presumably, it is not). Rather, what interests me is the general's comportment toward the evidence offered. Of course, he says something in response to the protesters' claim. But what he says, in the way he says it, sounds so ridiculous—not just that one can tell from a picture of a wound what kind of bullet caused it, but that one could do so without really looking—that it is difficult to take it seriously as an interpretation of the evidence. We should not lose sight of the setting in which this encounter is staged, a TV studio, with an audience of perhaps millions of viewers. The general is portraying himself, and thereby the regime, as receptive to the concerns of activists by engaging them in discussion. Perhaps his job description is simply to present the army's story and to deflect criticism while giving the appearance of genuinely engaging with the youth's concerns. Still, there might be room for a more receptive response that could be compatible with his role. Giving the appearance of receptivity and genuine receptivity are not the same. The general is engaging in the practice of portrayal in a way that insulates him from what is going on, rather than allowing the images to function as potential evidence that needs some sort of accounting for.[38]

Doing justice to the way things are involves a willingness to consider evidence and to follow it where it leads.[39] Still, the evidence doesn't wear its own significance on its sleeve. Even assuming the bullets are army bullets, do the wounds reveal something about the nature of the current regime,

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[38] Cf. Bert van Roermund on justice as letting something "count against" oneself: Van Roermund, *Legal Thought and Philosophy*.

[39] Here again, I draw inspiration from Wayne Martin's work on judgmental comportment. Martin, *Theories of Judgment*; Martin, "The Antinomy of Judgement, Delusion, and Twelve Angry Men."

or are they the tragic outcome of an unfortunate incident, a break with the regime's true character? In part, this calls for inferential work: integrating one's own perceptions and the testimonies of others into one's broader range of commitments about the regime and the world more widely, assessing whether those claims make sense and what follows from them. The face of power is inferentially articulated.

But by virtue of what does something appear as potential evidence of something in the first place? Truthfulness to the way things are with a regime involves, besides receptivity, also spontaneity. Facts must be gathered and disseminated if they are to function as evidence. *The Square* is full of other examples, including a video posted on YouTube of Ramy Essam, the "singer of the revolution," displaying his bruised body as evidence of torture by the army; lawyers trying to obtain autopsy reports at a hospital after a massacre of protesters; activists calling on each other to borrow digital cameras and go film what's taking place in the streets, and projecting the results on a large screen in the middle of Tahrir Square. "If people are being fooled about what is really happening here, we must film everything and show them the truth. As long as there's a camera, the revolution will continue."[40] Facts can only appear *as* evidence *of* something if they are made to appear in the first place—for instance, by getting oneself on stage in a TV studio. This includes trying to establish relations of trust. Someone tells you that the camel riders invading the square have been paid by the governing party. But can you trust the source? Judging legitimacy is partly a matter of deciding what television channel to tune into.

So portraying power is not simply a matter of transferring information, but of engaging in various political activities. And doing so truthfully is not simply a matter of having correct beliefs about a situation, but of involvement in it, comporting oneself practically toward evidence and toward others. For Havel, too, "living in truth" in a post-totalitarian system is not just a matter of cognition, refusing to believe what the regime tells you to believe, but of building relations to others and opening up space for saying and doing things differently. Many people still enacted the official ideology in their everyday activities, even if they did not truly believe in it. Living in truth is rather to manifest such refusal in one's actions:

[40] Ahmed Hassan in *The Square*.

anything from a letter by intellectuals to a workers' strike, from a rock concert to a student demonstration, from refusing to vote in the farcical elections, to making an open speech at some official congress, or even a hunger strike, for instance.[41]

If truthfulness is a striving to do justice to the way things are, trying to see, and help others to see, the powers that be for what they are, then virtuosity means making them appear differently than they are. Not all representation is about characterizing power as one takes it to be. The point of portraying power can also be to characterize the powers that be as they could be, will be, or as one wants them to be. Perhaps the purport of El-Baradei's tweet that Morsi declared himself a "new pharaoh" was less to reveal what his regime had already become, than to ward off its becoming the way it was portrayed.

Virtuoso representation cannot be understood as creativity *ex nihilo*, for it, too, depends on being taken up and sustained by others, if it is to 'stick' as a portrayal and be efficacious. A creative portrayal must still be recognizable as being *of* the regime and pertinent to it. Hence just as there is spontaneity in truthfulness, there is receptivity in virtuosity. Truthfulness and virtuosity, then, are not diametrical opposites; virtuosity is a form of truthfulness with a stronger emphasis on spontaneity, and vice versa.

Of course, authorities typically have vastly greater means at their disposal for portraying themselves as they wish than critical subjects have for portraying them differently, and they often do not look kindly on being portrayed differently than they see themselves. Thus from a practical point of view, the room for maneuver within this practice of representation in truthful and virtuoso ways, beyond simply reiterating the representational claims made on behalf of the regime, may be highly restricted, and the price for using it unbearably high. Not everyone gets released with a bouquet of flowers shortly after arrest (like Joanna), or enjoys the protection of an international reputation (like El-Baradei). Yet Mbembe points to ways in which subjects in even the most repressive regimes manifest virtuosity by twisting the self-representations of the regime to ridicule rather than revere it:

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[41] Havel, "The Power of the Powerless," 43.

However, contrary to expectations in a society so deprived of resources, there remained considerable disparity between the images that the state projected of itself and society, and the way people played with, and manipulated, these images—and people did so not just well away from officialdom, out of earshot or sight of power, but also within the arenas where they were publicly gathered to confirm state legitimacy. . . . When Togolese were called upon to shout the party slogans, many would travesty the metaphors meant to glorify state power; with a simple tonal shift, one metaphor could take on many meanings. Under cover, therefore, of official slogans, people sang about the sudden erection of the 'enormous' and 'rigid' presidential phallus, of how it remained in this position and of its contact with 'vaginal fluids'.[42]

The mode of creative appropriation Mbembe describes here is less a strategy of political change than a coping mechanism for living on in the penetrating presence of the state. Even so, it still resists the regime's becoming what it wants to be by representing it differently.

4.7   Conclusion

On the view presented in this chapter, portraying power is not a preliminary to the question of legitimacy, but goes to its heart. The question of legitimacy is profoundly a matter of what power is like in a particular context. Our grasp of the facts and norms succeeds or fails at representing power in virtue of the ways in which we engage in an ongoing political practice: the practice of offering, accepting, contesting, and reiterating representations of power. Representations of power give us a precarious grip on a political situation, but that grip is not given prior to but achieved (insofar as it is) through judging. From a practical standpoint, the nature of the regime cannot be settled prior to and independent of the question of its legitimacy; in portraying it one way or another, one partakes in the practice through which the regime is constituted as what it is. That draws our attention toward the forms of involvement and engagement that give us a grip on the situation, and the conditions that enable or compromise it (which I have only begun to explore here). Good judgment is conceived here as calling for truthful and

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[42] Mbembe, *On the Postcolony*, 105–06.

virtuoso modes of practical involvement with the object of judgment, as well as a reflexive relation to one's own judgmental activity. If this is compelling, that gives us reason for thinking that the concrete encounter of subject and authority matters for legitimacy in a way that theories of legitimacy oriented toward codifying normative standards overlook.

5

Legitimacy as an Existential Predicament

5.1 Introduction

This chapter zooms in on the role of identity in judging the legitimacy of a regime. Among the many protesters who filled Tahrir Square on the eve of President Mubarak's fall was a man with a sign around his neck that read: "I used to be afraid, now I am Egyptian." Evidently, overcoming his fear and speaking out against the regime were part of what Egyptianhood meant for this man. He was far from alone. In a video that went viral in the run-up to the demonstrations, the activist Asmaa Mahfouz announced: "I'm going out on the twenty-fifth to protect my dignity as an Egyptian." Yet nationality was not the only identity in play. Mahfouz went on to exhort her male peers to join her or forfeit their manliness.[1] On the face of it, then, there appears to be an intimate connection between people's stances toward a regime and their sense of who they are.[2] But how should we understand this philosophically? What is the relation, from a practical standpoint, between the questions "Who am I?" and "Who are we?," and the legitimacy of the regime? In struggles for legitimacy, does the appeal to a sense of who "I" am or who "we" are simply reflect a contingent psychological disposition, or is there some internal, conceptual connection with political legitimacy? How, if at all, does one's identification with a nation, gender, or religion bear on the legitimacy of the (purported) political authorities with which one finds oneself confronted?

The view advanced in this chapter is that the question of legitimacy is an existential predicament: it is fundamentally a question about who you are— both as a person, and as a member of collectivities.[3] Thinking about judging

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[1] For the man with the sign: Gribbon and Hawas, "Signs and Signifiers," 109. On Mahfouz's video: Taha and Combs, "Of Drama and Performance," 78.

[2] Indeed, empirical scholars consider identity a key factor explaining participation in protests. See Klandermans, "Identity Politics and Politicized Identities"; van Stekelenburg and Klandermans, "The Social Psychology of Protest"; Tanyas, "Protest Participation and Identity-Related Dilemmas."

[3] To be clear, the claim is not that political legitimacy is *reducible* to a question of identity; there are other dimensions to the problem. As the previous chapter argued, the question is also, and equally fundamentally, *about the regime*, its nature, its manner of governing, what it is like.

legitimacy as an existential predicament runs counter to the dominant tendency in the literature, which seeks to ground judgments in some sense of identity—whether it be a foundational sense of humanity, or a contingent sense of political community. That presumes that legitimacy and identity are separate issues. But if identity is part of what is fundamentally in question, then the proper content of judgments of legitimacy cannot be grounded in a prior account of who you are.

Thinking through this internal connection between legitimacy and identity prompts us to rethink what is involved in judging the legitimacy of a regime—particularly what it means to judge *well*. I will propose that we think about good judgment in terms of the activity of judging (rather than the correctness of the contents of judgments), and explicate three qualities of judgmental practice: consistency, integrity, and responsiveness. Moreover, I suggest that recognizing these virtues in conjunction also involves acknowledging that the question of legitimacy cannot be resolved at the theoretical level in the sense philosophers usually aspire to (as discussed in Chapter 1).

The role of identity in judging legitimacy is rarely discussed at a conceptual level, and I will try to bring this question into sharper focus (Section 5.2). I then proceed by reconstructing three ways of conceptualizing how identity bears on legitimacy that are implicit in the literature (Sections 5.3–5.5): the 'foundational,' 'associative,' and 'agonistic' picture. Whereas the first and second try to *ground* judgments in some sense of identity—a foundational sense of humanity, or a contingent sense of political community—the third treats identity as a fluid and contestable *product* of judgment. My concern is not to debate the merits of particular theories that fit under these headings, but rather to examine how they configure the relation between identity and legitimacy, with a particular eye to how they handle disagreement and uncertainty. Consequently, the pictures are somewhat stylized, though not, I hope, to the point of caricature. What makes it possible to put them side by side is not that they share exactly the same definitions but that they respond to the same pretheoretical practical predicament.

Each picture harbors a core insight, but none persuasively captures the concrete dilemmas of judging legitimacy from a practical point of view. Moreover, the ways they configure our key concepts—legitimacy, identity, and judgment—are incompatible. In a dialectical fashion, the final sections (5.7–5.8) propose a composite, 'pragmatic' picture, which integrates rational, prudential, and ethical qualities of the practice of judging that otherwise

seem inconsistent. I do not purport to refute the alternatives, nor to provide a knockdown argument in favor of the pragmatist view. The argumentative force in its favor derives from integrating the seemingly conflicting core ideas into a singular composite picture.

5.2 Preliminaries: Identity, subjectivity, and judgment

I begin by refining some vocabulary. If we want to understand how identity bears on the legitimacy of a regime, we have to ask what we mean by 'identity', *whose* identity we are talking about, and who is presumed to be judging that regime. As to the first, the philosophical literature on personal identity offers an important clue. Marya Schechtman and Paul Ricoeur both point out (in different terms) that the question "Who?" can be understood in two related but irreducible senses. Adapting their terminology, I'll refer to these as selfhood and character.[4] To be someone, to have an identity, involves on the one hand being a particular person, distinct from others. At issue here is a *self*, someone whose being is not exhausted by his or her relation to any particular performance, but who can be the subject of many actions and undertake a range of commitments. *Character* refers to a person's distinctive repertoire of commitments and characteristics, in contrast to what is different or otherwise; being *like* this or that. Schechtman observes that, from a first-personal viewpoint, character refers to what is at stake in an identity crisis, where one is deeply uncertain about who one truly is or what one is fundamentally like.[5] In contrast, selfhood is compromised in cases of extreme amnesia, where one is unable to recognize a past self that one is continuous with. More mundanely, in response to an accusation, you might say, "It wasn't me, it must have been someone else," or you could say, "I wasn't myself—that's not who I am."

Whose selfhood and character should we be concerned with? To answer 'political subjects' is not sufficiently specific. We can distinguish at least three pertinent meanings of the word 'subject'.[6] First, being a subject means having

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[4] Ricoeur speaks of sameness (*idem*-identity) and selfhood (*ipse*-identity); Schechtman of the characterization question and the reidentification question. Schechtman, *The Constitution of Selves*, 73–74; Ricoeur, *Oneself as Another*; cf. Lindahl, *Fault Lines of Globalization*, 82–83.

[5] Schechtman, *The Constitution of Selves*, 74.

[6] The threefold distinction drawn here encompasses two related distinctions made by Foucault and Althusser: Foucault contrasts being "subject to someone else by control and dependence" (governmental) with being "tied to his own identity by a conscience or self-knowledge" (experiential and agential), while Althusser contrasts "a center of initiatives, author of and responsible for its actions"

a conscious experience, thinking and feeling a certain way about something, having a perspective on the world. Call this the *experiential* sense of subjectivity. Second, there is a *governmental* sense: being subject*ed* to someone or something—being in their thrall, being ruled. Third, and perhaps least idiomatically, we might speak of the subject of activity. To be the subject of an action—more commonly referred to as the agent; hence, the *agential* sense—is to be the one who performs it, to whom the activity is attributable, whose commitments it expresses. To say that one is 'subject' in relation to a regime could thus mean three things: that the authority figures in some way in one's consciousness; that one is governed by it; and that one acts on it in one way or another (for instance, by complying or resisting).

These notions do not always coincide. One can think and feel things in connection with a regime without being subjected to it, or having any practical relation to it—for example, historical or imaginary regimes. One might be subjected to forms of power of which one is unaware. And one might act on a regime to which one is not subjected by supporting or undermining it from afar. Political subjectivity in the comprehensive sense—I call this 'thick' subjectivity—occurs when all three aspects intersect: one finds oneself confronted with a regime that purports to rule, and one treats the regime in one way or another. Thick subjectivity is essentially situated in a practical encounter with political authority.

This is crucial because it entails that it is one thing to ask about the proper role of the identity of those subjected to a regime, in anyone's opinions of that regime; it is another to ask about the significance of the first-personal self-understanding of a judging subject. Kant's distinction between "determining" and "reflective" judgment—discussed in Chapter 3—can help to make this clear. Recall that in determining judgment, you have a frame of reference on hand, which could be an empirical concept or normative standard, and you proceed to determine how a particular object or action fits within that frame. In reflective judgment, paradigmatically judgments of beauty, you have to somehow qualify the object without having appropriate concepts or criteria given in advance. What is important here is that what gives rise to aesthetic judgment is the *interplay* between subject and object; you must not just be subjectively aware of the object but concretely encounter it in the world. To appreciate beauty is to experience something akin to governmental

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(agential) and a "subjected being, who submits to a higher authority" (governmental). Foucault, "The Subject and Power," 331; Althusser, "Ideology and Ideological State Apparatuses," 82.

subjectivity: you must allow the object to hold you, as it were, in its thrall. This is why, for Kant, you cannot intelligibly claim to judge something beautiful if you have never actually encountered it, however much you learn about it from historical sources or the testimony of others. Now, the question for us is whether a concrete encounter between subject and authority might have a similar significance for the question of legitimacy as the concrete encounter with an artwork has (if Kant is right) for judgments of beauty. This is a question about the form or forms of subjectivity one takes to be involved in judging legitimacy. The views we shall discuss diverge on this, as a brief sketch of our trajectory shows.

The foundational and associative pictures discussed below see judgment as determining: applying a moral principle or a concept of collective selfhood. As we shall see, it matters, for whether the regime is legitimate, how *the governed* are properly characterized. As to *who judges* they are indifferent, it does not really matter whether one judges from a practical standpoint or from the third-person standpoint of an observer. Anyone who has the right theory, and access to the facts, can render the correct judgment. Judging a historical or imaginary regime is of a piece with judging a regime one encounters in practice. This requires only a thin, experiential sense of subjectivity.

The agonistic and pragmatic pictures invoke a thick sense of subjectivity, and go a step further even than reflective judgment. An aesthetic encounter (again, following Kant) puts in play your mental faculties, making you feel and think, but not act, in a distinctive way. But here, the interplay between subject and object is a decidedly *practical* encounter—the judging subject engages the regime practically by complying, engaging in resistance, and so on. Even fleeing and trying to ignore the regime are manners of comporting oneself toward it, and can be considered manifestations of judgment. To conceive judgment (in line with Chapter 3) as a complex of activities is to suggest that judging is not just a matter of forming an opinion, mentally, but a performance—hence, *agential* subjectivity is involved as well. Judgment so conceived has a public character: judgment lacks worldly reality and is hence politically meaningless if it fails to make an appearance. If judgment is taken to involve agential subjectivity, then we are not just asking, third-personally, how the identity of the governed bears on the legitimacy of the regime—now the selfhood and character of the judging subject are on the line. And this could give us a reason to think that the first-personal encounter with power matters in a way that is obscured by the other pictures. The question "Who?"

from a first- and second-person standpoint is potentially transformative in a way the external point of view is not.

5.3 The foundational picture

At the heart of the foundational picture is the thought that what counts as a valid reason for taking a regime to be legitimate or illegitimate is bound up with who one objectively is. This imposes a requirement of consistency between one's political allegiance and who one is deep down. There is an *inferential* relation between identity and legitimacy. The foundational picture cashes this out by supposing that correctly judging political legitimacy consists in applying valid moral criteria to the regime in question. The philosophical task is then to provide a justification of such criteria, and that is where identity enters the picture: such a justification will typically appeal to a foundational identity: an account of what the governed are fundamentally like—say, rights-bearing individual, autonomous agent, or social animal.[7] Not just any identity will do. People may have all sorts of ideas about who they are—seeing themselves as loyal patriots, protective parents, world citizens, and so on—and these identities could inform their relation to the regime in different ways, leading them to take conflicting stances. To a philosophical anarchist, the national flag waving of protesters at Tahrir Square appears as an irrational superstition, or at best as a strategic ploy. What is at stake, they would insist, is not one's dignity as an Egyptian but as a human being.[8] A sound philosophical theory is required to tell us what the relevant sense of selfhood is, how it is to be characterized, and what criteria of legitimacy follow from it.

On this picture, it is principally the identity of the *ruled* (governmental subjects) that bears on the legitimacy of the regime, as it is the exercise of power over *them* that raises the demand for legitimation in the first place. The identity of the judging subject does not as such factor into the judgment, and the standpoint of the judge—whether an engaged participant, or a third-person observer—does not matter in principle. The type of access to the situation that is required is purely epistemic, not practical: one must have the

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[7] For example, Nozick, *Anarchy, State, and Utopia*; Wolff, *In Defense of Anarchism*; Taylor, "Atomism"; cf. Smith, "Political Obligation and the Self."

[8] Thus, Wolff claims that national identity cannot be an appropriate ground for judgments of legitimacy, as it is "purely sentimental and has no objective moral basis." Wolff, *In Defense of Anarchism*, 19.

correct moral standard, and the relevant facts about the situation. Judging legitimacy requires neither governmental nor agential subjectivity, only experiential subjectivity.

Let us take a closer look at one example of such a theory. Anna Stilz has proposed a democratic theory of political legitimacy according to which some states—those that meet requirements of democratic governance—are legitimate, and citizens of such states owe special obligations to their state and their fellow citizens. Stilz introduces two imaginary characters with conflicting political stances. Sally is a loyal citizen of a democratic regime who feels a strong sense of constitutional patriotism. A nameless mafioso, on the other hand, pledges allegiance to the Family at the expense of his fellow citizens. Stilz wants to examine how—by what criteria—Sally (and we) can know that Sally is truly bound to uphold the regime, and that the mobster is mistaken in feeling bound to the Family instead. Such a criterion must appeal to something deeper than a subjective sense of belonging. After all, people may feel affiliation with all sorts of regimes, and criteria of legitimacy are meant to adjudicate when such identification is appropriate. The mere fact that the mobster identifies with the mafia does not render the mafia legitimate. Stilz argues that

> . . . surely any liberal would want to say that the mafioso has no such obligations, and to the extent that his identity or conception of himself leads him to think that he does, that conception is misguided, and his identity should be revised. Liberals wish, in other words, to find a source of external evaluation for our identities and practices, one that appeals beyond the self-conception of members to some further set of moral criteria.[9]

The moral criteria Stilz has in mind are freedom and equality. We can infer knowledge of correct standards of legitimacy from a clear grasp of these fundamental values: "[W]e can show Sally's obligations to be justified if we think deeply enough about what the extra-institutional principles of freedom and equality—to which liberals are already committed—really require."[10]

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[9] Stilz, *Liberal Loyalty*, 19.

[10] Stilz, *Liberal Loyalty*, 8–9. Also, p. 9: "A successful defense of political obligations to particular states, on my view, therefore need not appeal to any 'brute' moral force found in the existence of states, to [a democratic citizen's] common-sense intuitions, or to her felt attachments to her fellow members or her state institutions. Instead, I think it can be discovered purely in sustained reflection about what is truly involved in guaranteeing the freedom and equality of persons."

Does Stilz's approach fit the foundational picture? It is clear that she casts judgment as a matter of applying criteria.[11] We can recognize that only experiential, not governmental or agential subjectivity, is involved in such judging, if we notice the shift in perspective that occurs, seemingly unproblematically, in the text: "we," third-personal observers (who supposedly share a commitment to liberalism), are in a position to adjudicate between Sally and the mobster in just the same way that Sally can recognize her own subjective sense of obligation as justified. Anyone, it seems, can make this judgment.

Anyone? Even the mobster, if only he were to "think deeply enough"? The passages just quoted reveal a deep ambivalence about the significance of identity. On the one hand, Stilz is suspicious of the subjective self-understandings of both Sally and the mobster; hence, the need for something "external" to adjudicate among the identities they find themselves with. Yet what gets to play the role of the "source of external evaluation" in Stilz's argument is a commitment to autonomy—a commitment that she takes to characterize herself, and her presumed audience, *qua* liberal theorists. Yet to get a grip on the mobster, this commitment would have to be more than something liberals "wish" for and find themselves "committed" to (as in the passages just quoted). The idea is presumably that freedom and equality capture something fundamental about us as human beings, with which the mobster has lost touch. Otherwise, our source of evaluation would not really be external after all, and to a mobster who does not confess himself a liberal, the call to revise his identity will ring hollow.

Of course, Stilz does not deny that the commitment to autonomy could itself be called into question. I suppose she would say that this a matter of justification that goes beyond the task she sets for herself, which is more modestly to show fellow liberals who deny the legitimacy of democratic states (such as cosmopolitans and philosophical anarchists) that they are mistaken about their own commitments, not to convince the mobster. Even if justification is put off for now, the promise remains that the issue can, in principle, be resolved philosophically, if only we can muster the requisite effort and acumen. Stilz is by no means the only theorist who avoids deep disagreement by deferral in this way. Both Nozick and Wolff remark on it, with some embarrassment: Wolff regards it as a "major inadequacy" that, "[t]o put it bluntly, I have

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[11] "What precisely is the criterion that a citizen should use to judge whether or not a particular state is legitimate? And how does she know if she is actually under any political obligations?" Stilz, *Liberal Loyalty*, 89.

simply taken for granted an entire ethical theory," and Nozick remarks this challenge leaves a "yawning" gap to be filled another time—perhaps another "lifetime."[12]

In the meantime, the foundationalist remains committed to the view that judging is a matter of applying moral standards. But notice how much must be taken as given, on this picture, if judgment is to get off the ground. The moment of identification—here, confessing oneself a liberal, committed to autonomy—occurs *prior* to judging legitimacy and is taken for granted therein. Ostensibly, the foundational identity from which such criteria must be derived is contestable and stands in need of justification. But this questionability is twice removed from the practical predicament of taking a stance toward the authorities, here and now. Doubt and dispute are relegated to the register of justification, rather than application, which justification is then indefinitely deferred. In lieu of such a foundation, we can proceed only with judgment by acting *as if* we have resolved it. This treats as given much of what is at stake in the question of legitimacy. The picture does not offer an account of what judging legitimacy might involve *in the face* of disagreement and uncertainty.

5.4 The associative picture

The core idea of the associative picture is that it is part of the nature of a genuine political association that governed subjects and authorities have a certain normative standing vis-à-vis one another, just as being part of a family involves special commitments and entitlements. This picture casts our gaze not toward a foundational identity of the governed, constituted and characterized independently of the contingent political relations in which they find themselves, but toward their identity *in* political relations: membership, or lack thereof, in a political community. The identity to be considered is again that of those subjected to the regime, although the relevant sense of selfhood is now thought of as contingent and collective. This picture stresses the *ontological* significance of identity: the existence

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¹² Wolff, *In Defense of Anarchism*, xxviii; Nozick, *Anarchy, State, and Utopia*, 9. Some philosophers have tried to fill this gap. Copp, for example, grounds his theory of legitimacy in a moral theory centered on the needs of societies. Copp, "The Idea of a Legitimate State"; Copp, *Morality, Normativity, and Society*. Still, both criteria of legitimacy and their moral background remain deeply disputed.

of political relations of a certain kind constitutes a reason for treating a re-
gime as legitimate.[13]

Judging legitimacy on this picture is a matter of interpreting accurately
the concrete relations of power and affiliation in which governed subjects
find themselves. To assess whether a regime is legitimate vis-à-vis those it
governs, one must look and see whether the pertinent bonds of belonging
are in place. In other words, it is a matter of gauging the presence or absence
of collective selfhood—the *fact of membership*. The act of judgment is again
conceived as determining, the difference being the given universal here is a
concept of community rather than a moral principle. Consequently, the ac-
count is again indifferent as to the judge's standpoint. What is required, for
judgment to go well, is knowledge of the appropriate concept of community,
and epistemic access to the situation, to assess the nature of the relationships
present. The task for a theory of legitimacy is then to spell out what it means
to genuinely be a member of a political community.[14]

I want to raise two concerns about treating the "fact" (either presence
or absence) of membership as a given ground for judgments of legitimacy.
First, even if we take the existence of membership—the constitution of col-
lective selfhood—as given, this does not settle the question of how that self
is to be *characterized*. The national-flag-waving protesters at Tahrir Square
were undoubtedly expressing a sense of belonging, but they took this to have
the opposite practical significance from what associativists typically argue,
invoking this identity not in support of the regime, but to demand its fall. The
regime, on the other hand, saw them as betraying their country. The content
of the practical reasons supposedly bound up with the fact of Egyptianhood
is precisely what is in contention here. Depending on the details of the
theory, the associative theorist could insist that these protesters misunder-
stand what it means to be a member of their polity (they *are* members; hence
bound to uphold its institutions). Alternatively, an associativist could say that

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[13] Here, I highlight an ontological strand in this literature, which considers genuine membership
a matter of social fact that does not require external moral validation. But associativism can also be
understood in moral terms, in which case it leads back to the foundational picture. See note 17 and
van der Vossen, "Associative Political Obligations."

[14] For Margaret Gilbert, for example, a genuine political community is a "plural subject" constituted
by a "joint commitment" on the part of its members, which involves (among other things) an ob-
ligation to uphold that community's basic institutions. The existence of such a plural subject is a
social fact that depends on the mental states of the individuals who compose it, and explains that
those individuals have certain normative statuses. To determine whether the governed have polit-
ical obligations, we would need to see whether a joint commitment is in place. Gilbert, *A Theory of
Political Obligation*.

political relationships in Egypt had already broken down, such that people can no longer see the regime as truly theirs (hence they need not consider themselves bound to it). In neither case, however, is the fact of membership common ground to which one can appeal to answer the question of legitimacy. Either way, the theorist would be taking sides in a profound political dispute, and participants could ask: Who are you to presume to settle from your philosopher's chair what it means to be an Egyptian?[15]

The second concern is about the constitution of collective selfhood: Does it make sense, from a practical standpoint, to treat the existence of membership as a given fact? To probe this, we need to ask what exactly makes one a member of a polity to begin with. There are basically two types of view.[16] The first is that membership is essentially an ascribed status—preeminently by the authorities, but also by fellow citizens. Citizenship is a condition many people find themselves in, thrust upon them by the particular polity in which they are born and raised. The alternative is to say that membership "must be something more than a mere label imposed on individuals," as Massimo Renzo has said.[17] To genuinely be a member, one must also recognize oneself as a member, identify subjectively with the community, endorse one's role as citizen. Either way, if this is what it is to be a member, we can unproblematically ascribe membership from a third-person standpoint. Of course, it may be difficult, in practice, to interpret how people see themselves. But any difficulties inherent in identifying someone as a member of this or that community are merely epistemic.

The problem is that from a first-person practical point of view, it does not make sense to regard collective identity as a fact given to judgment in either of these senses. Take first the idea that being a member is being treated as a member. It is true that, as John Horton observes, "we all start from somewhere, and that somewhere is not of our choosing."[18] But it does not follow

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[15] The commitments of membership are usually taken to include support for a community's basic institutions, and perhaps a duty to obey the law. John Horton suggests that political membership could sometimes require opposition rather than support for the regime, and denies that his associative theory is meant to resolve this issue from a theoretical standpoint. But that raises the question of how much work the fact of membership can really do to answer the problem of political obligation. Horton, *Political Obligation*, 168.

[16] Van der Vossen, "Associative Political Obligations," 480–81.

[17] Renzo, "Associative Responsibilities and Political Obligation," 114. There are two ways of reading Renzo's point that membership must be subjectively endorsed to be "meaningful"—morally and ontologically. Is identification required because only if you endorse your membership are you *truly* a member? Or, because only if you do so is your membership morally *justified*? His text offers support for both. See Renzo, "Associative Responsibilities and Political Obligation," 125, 121.

[18] Horton, "Associative Political Obligations: Part Two," 13.

that we start with a determinate view of where "here" is; it requires effort
to obtain our bearings and come to grips with what appears as given. To be
sure, if you find yourself being taken as, say, an Egyptian, this is undoubt-
edly a fact that opens and closes various practical possibilities; whether you
will be able to obtain a passport, for example. You must somehow practically
relate to being thus treated. But that does not settle, from your own prac-
tical standpoint, that you should think of yourself as an Egyptian and con-
sider yourself as part of "us Egyptians." Suppose you were raised to think of
yourself as a loyal citizen, but a philosophical anarchist now persuades you
that this was a mistake, and to see yourself for what you truly are: a person
without a country.[19] Of course, you are not denying that you still have a pass-
port, just that this generates any binding sense of belonging. From a prac-
tical standpoint, membership is a normative status, and cannot be reduced to
how you are being treated by others.[20] To be fair, Horton acknowledges that
one can renounce one's membership.[21] But if membership is constituted by
being taken and treated in certain ways, this can only ever be understood as
breaking a really existing bond; the philosophical anarchist's retrospective
realization that the bond was illusory, that one wasn't who one took oneself to
be, becomes unintelligible.

What, then, about the view that some form of endorsement is constitutive
of genuine membership? If one accepts this, then judging legitimacy requires
looking backward at one's past actions or attitudes to see whether one has
endorsed one's membership in a relevant manner. But this casts one's glance
in the wrong direction.[22] The mere fact that I have taken myself as a citizen
in the past settles the question of who I truly am just as little as the fact that
others take and treat me as such. From a first-person standpoint, the signif-
icant question is not so much "have I endorsed," but "*shall* I endorse" the

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[19] Wolff, *In Defense of Anarchism*, 18–19.

[20] This is a variation on a standard objection to associativism, namely that *de facto* membership
cannot, by itself, institute binding normative statuses. Usually, this is taken to imply that mem-
bership requires validation by "external moral principles," which leads back to the foundationalist
picture while leaving undisputed that the fact of membership is unproblematically given to judg-
ment. Simmons, "Associative Political Obligations"; Mokrosinska, "Communal Ties and Political
Obligations."

[21] "[A]lthough membership . . . is something individuals can ultimately choose to reject, it is ini-
tially rooted in an associative relationship with an independent reality. [T]he associative relationship
exists independently of acts of acceptance or rejection." John Horton and Ryan Gabriel Windeknecht,
"Is There a Distinctively Associative Account of Political Obligation?" 911.

[22] This point parallels Hanna Pitkin's concern about consent theory. Pitkin, "Obligation and
Consent—II."

membership attributed to me? Can I go on seeing myself as the citizen I've always taken myself to be?

The problem shows up clearly when Renzo draws the analogy with family relations: "[I]f I 'deny' my parents, I stop occupying the role of son, and *consequently* I stop having the obligations that normally attach to that role" (emphasis added).[23] But isn't denying one's parents, if they are true parents, exactly to violate one's obligations as a son? Alternatively, if they are not true parents, then is not their failure to perform their parenthood rather than the son's denial what releases him from his obligations? It would seem, in the latter case, that his denial merely recognizes and responds to this prior breakdown of family relations.[24] To deny that one has special obligations toward one's parents *is* to deny that one is in a meaningful family relationship to one's parents. When you seriously doubt whether you owe anything to these people in particular, the existence of the relationship cannot ground an answer to that predicament since the nature of that relation is precisely what hangs in the balance.

The root of the problem lies in thinking about the constitution and breakdown of political relationships as facts given to judgment, to be accurately reflected therein. First, you become who you are; next, if judgment goes well, you recognize who you have become, with the practical commitments and entitlements that this identity entails. This temporal sequence makes it possible to think about collective identity as a ground for judgment. Moreover, the same judgment could, in principle, be made by anyone with epistemic access to the situation. But this obscures the dilemma of whether or not the relationship in question is genuine and is to be sustained. In a concrete struggle for legitimacy, the nature of the relationship that obtains between a regime and its subjects, and the attendant commitments that characterize the relation, is precisely what hangs in the balance. Membership is not the answer to the question of legitimacy—it is part of the question.

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[23] Renzo, "Associative Responsibilities and Political Obligation," 120.

[24] "Choosing to deny my parents, or to disown my son, does involve an act of the will, but this act of the will is meaningful only to the extent that it is grounded in a process of self-understanding in which I come to realize that those ties that used to bind me to my parents or to my son are not in place anymore." No, it *is* that process of self-understanding. Renzo, "Associative Responsibilities and Political Obligation," 122.

5.5 The agonistic picture

The foundational and associative pictures of how identity bears on legitimacy have in common that they construe identity as a ground from which judgment ought to depart, either in the form of a prepolitical self or a determinate sense of membership. And they lead us to strive for philosophical knowledge to help us recognize that ground in practice: a moral principle in the one case, and a concept of community in the other. This aspiration for knowledge seems hopelessly naive from a third, 'agonistic' perspective, which regards selfhood and character (both individual and collective) as inherently contestable. The core idea here is that identity is never a *fait accompli*, but always ambivalent and questionable, subject to an ongoing, open-ended play of action and response (the ancient Greek word *agon* means "contest or struggle").[25]

We can cast this from a Foucauldian or an Arendtian angle. From a Foucauldian point of view, selfhood is a product of power and a site of tension. It is a product of power in the sense that we become who we are, both qua individuals and collectives, through being structurally taken and treated in certain ways.[26] The self is a site of tension in that the manifold relations of power in which we find ourselves never fully operate in unison. They do not completely determine our behavior but leave some, perhaps minimal, room for unpredictable and transgressive self-overcoming.[27] We could have been different, and can become other than who we are by resisting who we are taken to be—not because each of us carries a core of autonomous individuality that is not subject to power, but because our involvement in struggle can alter the balance of forces.

If power and agency constitute and characterize who we are, that casts suspicion on the idea that there is either a true or authentic meaning of Egyptianhood, or else a foundational sense of self, prior to judgment, in terms of which the question of legitimacy can be resolved. Egyptians may *take* themselves to oppose the regime in demanding the downfall of Mubarak, but when they do so in the name of Egyptianhood, are they not, in effect, reiterating and reinforcing a dominant nationalist mode of collective

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[25] Hans Lindahl, for example, says: "[C]ollectives exist in the mode of questionability." *Authority and the Globalisation of Inclusion and Exclusion*, 280. For an excellent overview of (democratic) agonism, see Wenman, *Agonistic Democracy*. See also note 42.

[26] Olson, "Constructing Citizens."

[27] In the words of Judith Butler: "[The] subject is itself a site of this ambivalence in which the subject emerges both as the *effect* of a prior power and as a *condition of possibility* for a radically conditioned form of agency." Butler, *The Psychic Life of Power*, 14–15.

self-understanding—with all its attendant exclusions? To the extent that nationhood, gender, and human individuality are shaped or rendered politically salient by pervasive relations of power, identity appears itself as liable to critique, and perhaps therefore more properly regarded as an *object* of legitimacy claims. And insofar as by resisting who we are taken to be, we constitute and characterize ourselves differently, identity becomes a *product* of our own judgmental activity. While Foucault avoids putting the issue in terms of legitimacy, he is obviously ill at ease with the predominant forms of identification to which we have been subjected—individuality as much as nationhood.[28] As identity comes into question, the ground for such critique becomes shaky: no identity, no matter how foundational it is taken to be, is beyond suspicion. On this picture, then, judging legitimacy consists not in applying a given moral norm or a concept of community, but in a groundless struggle for self-overcoming.

The Arendtian angle couches this in terms of action rather than power. Your words and deeds constitute a response to the second-personal question: "Who are you?"[29] Because your identity as a distinct individual unfolds over the course of a lifetime, the answer is, from a first- and second-personal standpoint, always provisional. And since the meaning of your actions depends also on how they are perceived and responded to by others, how this unfolds is not under your control—who you are is not up to you alone.[30] It follows that identity is not readily available for cognition from a practical standpoint, and to treat it as if it were is to fail to acknowledge the uncertainty and vulnerability that characterize political agency.

Along these lines, the question what it means to be an Egyptian—would a true Egyptian rise up, or stay loyal?—does not have a fully determinate answer. The man who said "I used to be afraid, now I am Egyptian" at Tahrir Square is not stating a fact, true or false, about what it already means to be Egyptian. Rather, he is issuing an invitation (Arendt) or making a power play (Foucault) to conceive Egyptianhood anew. The success of his attempt to characterize Egyptianhood thus depends on how others will respond. If enough individuals overcome their fear, and continue to see themselves in

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[28] "We have to promote new forms of subjectivity through the refusal of this kind of individuality which has been imposed on us for several centuries." Foucault, "The Subject and Power," 336.

[29] "Action and speech are so closely related because the primordial and specifically human act must at the same time contain the answer to the question asked of every newcomer: 'Who are you?'" Arendt, *The Human Condition*, 178.

[30] "[N]o one is the author or producer of his own life story." Arendt, *The Human Condition*, 185.

this light, that is apparently what Egyptianhood turns out to have meant—though again only provisionally, subject to further contestation.

This picture fundamentally reconfigures the relation between legitimacy and identity. Identity appears not as a ground but as a product and as an object of judging legitimacy: a product insofar as we become who we are through judging, and an object insofar as our identity is politically constituted and characterized, and hence open to further questioning. According to the agonistic picture, judging legitimacy is an act of self-transformation. Consequently, it is crucial *who* does the judging. Judging, from a practical standpoint, is to intervene in a play of forces, or to engage in a sequence of action and response. Even if we are prepolitically constituted as biological organisms, what renders our human nature salient for our first-personal understanding of who we are, and for our stance toward the regime, is a political process, and this is a process in which others have an irreducible part to play. Reflexively engaging in this judgmental practice involves bringing one another to see the ways in which power makes us who we are, acknowledging the contingency of the self-conceptions we find ourselves with, and, through contestation, coming to see ourselves and each other differently. Beyond subjective awareness (experiential subjectivity), this is essentially a matter of involvement in a practical encounter, in which the judging subject is subjected to (governmental subjectivity) and acts on (agential subjectivity) a constellation of power relations.

There is a sense in which this picture places disagreement and uncertainty about who we are at the heart of judgment since it insists that any identity is questionable. Selfhood and character are at stake in judgment, rather than given to it. Yet from a first-personal standpoint, the idea that identity is always contingent and contestable is itself a rather abstract consideration, which, while casting suspicion on foundational and associative attempts to theoretically resolve the problem, tells us little about how to practically go on in the face of concrete dilemmas. Uncertainty and disagreement appear as conditions inherent to any sense of who I am, and for this reason, the picture seems unable to give much orientation to judgment. Indeed, if judgment is inherently groundless, then it appears as though the question of legitimacy is ultimately undecidable. Unless we can find a more complex picture of what judging legitimacy involves, judgment may come to seem like nothing more than a potential for arbitrary recalcitrance and directionless self-overcoming.[31]

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[31] The agonistic picture sketched here is, of course, a simplification. Arendt certainly did not regard judgment as arbitrary and saw promise in Kant's notion of reflective judgment for thinking about

5.6 Intermediate conclusion

Three core ideas about the relation between identity and legitimacy can be gleaned from our three pictures:

1. *Inferential significance of identity*. What counts as a valid reason for regarding a regime as legitimate is rationally dependent on who the governed truly are "deep down." The foundational picture interprets this with the help of a split between justification and application. Judging well is a matter of applying valid standards. Such standards must be justified by reference to the morally significant selfhood and character of the governed, as constituted independently of the concrete relations of power in which they find themselves.

2. *Ontological significance of identity*. The legitimacy of the exercise of power over subjects depends ontologically on the nature of the relationships in which subjects and authorities find themselves. Who you are in a *political* sense—that you are (not) a member of this political collectivity—determines whether the regime's rule over you is legitimate or illegitimate. The picture interprets this by reference to the fact of membership. Judging well is a matter of grasping correctly the existing relations of power and affiliation the governed find themselves in.

3. *Questionability of identity*. Who you are, personally and collectively, does not determine the regime's legitimacy; selfhood and character are at stake in judgment rather than given to it. Selfhood is constituted and characterized, always provisionally, in an ongoing practice of taking-and-treating the regime *as* (il)legitimate. Judging is an act of self-transformation that can never fully extricate itself from the relations of power that it calls into question. The legitimacy of a regime is inherently contestable and underdetermined.

Together, these ideas appear inconsistent because each approach configures the relations among identity, legitimacy, and judgment differently. This is easily seen if we consider what a judging subject must take for

political judgment. Yet to my knowledge, the vast literature she inspired does not include a systematic account of how to judge the legitimacy of a regime. See Arendt, *Lectures on Kant's Political Philosophy*; Feldman, "Political Judgment with a Difference"; Zerilli, *A Democratic Theory of Judgment*.

granted, on each picture, if judgment is to go well. Let us assume the stand-point of a thick subject in an encounter with a regime.

If judgment is to get off the ground, on the first picture, I must have moral criteria ready to hand, and for these to be valid, they must be rooted in a correct account of my (and other subjects') moral status. So prior to judging legitimacy, I must figure out who I am deep down, sorting out which characteristic aspects of myself (race, gender, family bonds, religion, nationhood, humanity, etc.) are morally fundamental, and infer criteria from that self-characterization. This is where the foundationalist's theorizing is supposed to help out. On the second picture, I must presume that there exists a deter-minate fact of membership, available for cognition, and my challenge is to in-terpret the political relations between the regime and its subjects (including myself, coincidentally) in order to correctly recognize whether the bonds of a genuine association are in place. This requires that I have a conception of what a polity is, and of the commitments and entitlements that characterize members and authorities. This is what an associative theory aims to provide. The two pictures are deeply at odds: the foundationalist will demand that my sense of membership be independently validated before it can institute gen-uine normative statuses, while the associativist will insist that the appeal to a prepolitically constituted identity is a move of abstraction that fails to appre-ciate the nature of the situation that I find myself in.

From a practical standpoint, this is perplexing. If judging consists in applying a given principle or concept, and judging well requires having the correct one, then it seems that I must suspend judgment until the philosoph-ical dispute is sorted. Uncertainty and disagreement drive us on a quest for philosophical knowledge. Of course, in lieu of a philosophical resolution, one could adopt one or another view and act *as if* it is the correct one. But this leaves no room for uncertainty and disagreement about who we are *within* the horizon of judging legitimacy. And if, as thick subjects, we inevitably take or treat the regime in one way or another, suspending judgment is not really an option; our judgment will manifest itself in our comportment to the re-gime, whether deliberate or not.

The third picture denies, in principle, that the requisite forms of knowl-edge can be first-personally at my disposal in the sense required. To presume to know what it means to be a person, or what it means to be a member of this community, is to take as given precisely what is in question. Who you are is not constituted and characterized prior to judgment; judging shapes who you are, it makes or breaks relationships. As a consequence, the question

of legitimacy never finds a resolution, as the identity with which it is bound up remains open to contestation. By depriving judgment of its ground in one or another form of identity, this picture seems to render judgment arbitrary. Who you are then seems entirely up for grabs or utterly at the mercy of power. This makes it hard to understand how judging legitimacy could be anything other than an aimless and interminable process of self-overcoming.

Of course, a lot more could be said to defend, refine, or refute each picture. But in what follows I want to try something else. If each of these views captures something important, as I think they do, then it seems that judgment must, yet cannot, be grounded in identity (be it personal or collective). This paradox, as it stands, is perplexing rather than enabling; it leaves entirely mysterious how one might go on and what it might mean to judge well. Rather than arguing out the differences among the pictures, I will try to reconfigure their key terms to make conceptual room for a manner of judging that acknowledges disagreement and uncertainty while accommodating their key insights.

5.7   A pragmatic picture

Can we think about judgment in the face of authority in a way that acknowledges and responds to uncertainty and disagreement, rather than denying or reifying them? The present section presents an alternate framing of the significance of identity for legitimacy, centered on a notion of judgment as an ongoing and open-ended practice.

Chapter 2 conceptualized political legitimacy not as a property that regimes have or fail to have, independently of one's perspective on them, but rather as a normative status essentially attributed or withheld from a practical point of view. Claiming that a regime is legitimate is expressing a practical stance, not representing a property. Judging legitimacy is adopting, shifting, or maintaining a stance toward a regime. In other words, distinguishing in practice whether the regime is legitimate is to take and treat the regime in certain ways rather than others. In Chapter 3, I proposed that we understand judgment as an ongoing practice—not a mental decision in which theoretical knowledge is brought to bear on a particular situation, nor a singular transformative performance, but a continuous and open-ended set of activities. The question now is how to characterize that practice—to flesh out the forms of activity that constitute judgment (concerning legitimacy). In the current

section, I show how rethinking judgment as a practice enables us to integrate the core ideas of the alternative approaches in a single framework. In the next, I argue that the shift in focus from mental act to political practice also enables us, by drawing attention to the pragmatics of judging, to bring into focus rational, prudential, and ethical aspects of good judgment that otherwise remain at most partially recognized.

My suggestion now is simply that one part of the answer—one of the activities that judging legitimacy consists in—is the practice of constituting and characterizing political selfhood. Here, identity figures neither as a ground, nor as product, nor as the object of judgment. Identity is integral to judging legitimacy; it is part of what is practically at stake, what hangs in the balance in judging.[32]

This conception of judgment invokes a thick sense of subjectivity: the judging subject is also a governed and acting subject. One finds oneself in an encounter with a regime in which there are already certain claims as to who one is, and one is bound to respond in one way or another. An attempt to rule is always addressed *by* someone *to* someone. A regime attempts to get a conceptual grip on those it subjects, characterizing them in various ways; as an aggregate of consumers of public services, a body of self-ruling citizens, as a nation bound together by blood, soil, culture, or shared institutions. Moreover, it typically articulates various classes of subjects (citizens, residents, visitors, illegal aliens, enemy infiltrators, etc.) and treats them differentially—as entitled to this or that, as liable to such-and-such forms of coercion, as more or less of a threat.

These acts of identity attribution (or "interpellation"[33]) on the part of the regime call for a response—for judgment. A stance toward a regime is a response to the ongoing attempt on the part of the regime at constituting and characterizing a collective self. Conversely, a stance vis-à-vis the regime is always a stance *as* someone. Claiming that the authorities you face are (il)legitimate reveals something of who you take yourself to be in relation to those authorities (and to others subjected to those authorities): that you can, or cannot, bring yourself to see yourself as the citizen (or otherwise) you are taken to be, and exhibit the appropriate loyalties and fulfill the attendant obligations.

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[32] For similar intuitions regarding the connection between identity and political judgment, see Beiner, *Political Judgment*, 143–44; Ferguson, *The Politics of Judgment*.

[33] Althusser, "Ideology and Ideological State Apparatuses."

You could deny that you are a member of the collective ventured by the authorities: "I'm not one of you" or "We are not truly a collective." This presupposes that you have a conception of who you are in *other* respects—as a human being, Arab, woman, Muslim, father, and the like—which is inconsistent with that attributed by the authorities. This is what the philosophical anarchist might claim, who insists on the separateness of autonomous individuals. Alternatively, you might affirm membership, but seek to characterize it differently or try to mobilize a counter collective: "That's not who we are." This may well be the upshot of the many national flags at Tahrir Square. Or, take one of the slogans that epitomized the Arab uprising: "The people demand the fall of the regime." This chant not only expresses rejection of the regime, it also says something about the self-understanding of those who make the claim. The demonstrators are not saying: "We" demand the fall of the regime. They purport to speak in the name of the "people." Thus, they cast themselves as representative of a collective self, characterize that self as inconsistent with support for the regime, and seek to mobilize others to sustain the collective so characterized. Even unreflexively going along with the ways in which one is taken and treated is a manner of judging, for this response, too, partakes of the same practice: it contributes to sustaining the collective ventured by the regime, and sets an example for others.

To sum up: judging the legitimacy of a regime is to partake of a practice of self-constitution and self-transformation, in a twofold sense: (1) It contributes to sustaining or subverting a governed collective, as characterized in some specific way, and (2) it seeks to associate or dissociate the judging subject's personal self from this collective, thus seeking to characterize oneself (and certain others) as a member or nonmember of that collective. A judging subject ventures to constitute, sustain, or dissolve a collective of such-and-such character, and to characterize individuals as members (or nonmembers) of that collective. Judgment so conceived is at the nexus of "I" and "we," of personal and collective selfhood. Judgment thus responds to two senses of the question "Who?": who is included and who is excluded; and what it means to be included, that is, what one is included (or excluded) *as*.

I said that judging legitimacy is to *partake* of a *practice* of self-constitution and self-transformation because this is not something one can achieve by oneself (if one can say it is ever achieved at all). Self-constitution here means the constitution *of* one's (political) self *by* oneself as a person—but not by oneself alone. The encounter with a regime is also an encounter with others in its ambit, and taking a stance is taking a stance *with* certain others, engaging in

collective action, forging, renewing, or breaking alliances. The question of what stance to take is thus also a question of whom to stand with. Judgment, so conceived, is an intersubjective practice of community building and breaking in which no single actor is decisive.

Casting identification as integral to judging legitimacy enables us to take up and reinterpret the core ideas of the three approaches identified in the preceding.

1. *Inferential significance of identity*. A stance toward the regime makes sense (or fails to) in terms of who you are in other respects. But in contrast to the foundational view, the direction of inferences does not go one way only. If my stance toward the regime is incompatible with another aspect of who I take myself to be—a good parent, a religious believer, a world citizen, and so on—I am rationally committed *either* to shift my stance, *or* to adjust who I take myself to be in another respect. One must flesh out what it means to be oneself as a person and as a member of collectives in the same ongoing and open-ended movement.

2. *Ontological significance of identity*. The question of legitimacy is bound up with the existence of collective selfhood. But 'bound up' in what manner? Not in the sense that the absence or presence thereof, as a matter of objective fact, supplies the answer to the question of legitimacy. From a practical standpoint, this self is never a *fait accompli*, but a task to be carried through, an inherently unfinished project. Judgment does not just reflect the existence of a collective self but sustains, transforms, or dissolves it. As long as the encounter with the regime is ongoing, its existence continues to hang in the balance.

3. *Questionability of identity*. From a practical standpoint, the question of legitimacy is, in part, a question of "who I am" and "who we are" in relation to the regime. This is always an open question because it depends on how "I" and "we" carry on in the future. No identity is simply given to judgment. This leaves judgment groundless but, as we shall see, not without orientation.

5.8 Judging well

I have proposed that we think of judging legitimacy as partaking in a practice of self-constitution and self-transformation. This tells us something about

what is at stake in the question of legitimacy—that it is, in part, a question of who I am, and who we are, in relation to the regime. It doesn't tell us which judgments we ought to make, what stance to take, who to be. Still, without purporting to resolve that question, perhaps we can say more about the qualities of the practice: What is involved in performing judgment well?

To begin, insofar as the question of legitimacy is also a question of who to be, this implies that an account of the quality of judgment requires an account of how to shape selfhood and character. I will not venture a general theory of how identity formation goes well and poorly.[34] Instead, I try to build on the core ideas of our three initial pictures, as reinterpreted in the preceding section, and draw out three virtues of the activity of judging. I propose that judgment goes well to the degree that one's judgmental comportment manifests:

1. *Consistency* within and across perspectives. This is a matter of how well your (implicit or explicit) characterization of yourself qua governed subject meshes rationally with other aspects of your identity (as a person and as a member of other collectives), and with who others take you to be.
2. *Integrity*. This concerns the effective, material manifestation of your selves (personal and collective) in the world—coming to be who you take yourself to be.
3. *Responsiveness*. This concerns how you bear your identities and relate to your own judgmental activity: whether your manner of comportment acknowledges the inherent questionability of identity.

5.8.1   Consistency

The question of legitimacy presents us with the challenge of rationally integrating our political identity (as a member/nonmember of a governed collective, characterized thus-and-so) with who we are in other respects (human being, affiliate of this-or-that group, etc.). Our identities are inferentially articulated, but they are typically by no means fully explicit and consistent, remaining to some degree implicit, fragmented, and even fractured.

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[34] There is, of course, a vast literature, with which I cannot engage here. An exploration that also reflects on the role of the state is Appiah, *The Ethics of Identity*.

In concrete practical situations, our different senses of who we are may pull in conflicting directions. On our pragmatic picture, coping with this is not a purely cognitive challenge of thinking through and ordering hierarchically all our various senses of who we are into a single, comprehensive whole, but rather of dealing practically with incompatibilities as they arise, in engagement with others.

Responding to such practical incompatibilities involves correlating distinct registers of commitments, across two divides:

a. Between the first-person singular and first-person plural ("I"—"we"). The question here is how well, from my own point of view, my political allegiance meshes with who I take myself to be in other respects; whether membership in this collective, thus characterized, is something I can live with, with other aspects of who I am intact.

b. Between the first and second person ("I"—"you"). Here, the question is how well my sense of who I am, in personal and collective respects, meshes with who *others*—not least, the regime in question—take me to be.[35]

Inconsistencies call for a response along both inter- and intrasubjective axes. Suppose you aspire to be a good parent to your children, and you think that that involves raising them to think for themselves. Up to now, you've also thought of yourself as a loyal citizen. Now the regime starts what you consider to be a leadership cult, adapting school curricula to inculcate respect for the leader and expecting loyal subjects to ingrain unquestioning obedience in their children. Insofar as you remain committed to being a good parent, and to your conception of what that involves, you cannot any longer affirm your citizenship in exactly the way this is characterized by the regime. The two views have clashing implications, for example, for which bedtime stories to read to the kids, which school to send them to, or what parenting advice to give to your friends. Consequently, you need to revisit your understanding of what it means to be a parent and a citizen under this regime. One option might be to say that the regime is failing to recognize you as the autonomous citizen you truly are, and try to foster your kids' critical capacities in spite of the regime, through home schooling perhaps. Or, perhaps you find

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[35] Cf. Laden, *Reasoning*, 237–41. In Brandom's terms, the former (a) concerns relations among the commitments one acknowledges, whereas the latter (b) is a perspectival distinction between the commitments one acknowledges and those attributed by others.

that your commitment to individual autonomy was not as deeply held as you thought, and that you are not willing to risk your job, or your survival. Under these circumstances, you might conclude, keeping your family safe and providing for them is what is most important. Finally, perhaps you no longer feel that membership in this community is something you can live with, and try to flee with your family.

Dealing with these sorts of predicaments is partly a matter of working out how your own commitments hang together inferentially (e.g., what bedtime stories fit with my understanding of individuality and citizenship?), revising those commitments to obtain a better fit. The core insight of the foundational picture finds a place here: one can get a grip on the problem by thinking through the implications of who one is. But there are several important points of contrast. First, this inferential work is not brought to completion prior to judging but integral to it and ongoing. Second, the direction of revision is not fixed in advance. Is one's political identity to be revised in light of (aspects of) one's personal identity, or the other way around? It is not simply given that one is more fundamental than the other—to believe that is to miss the dilemma one confronts when significant parts of one's self-conception conflict.

Third, the intra- and interpersonal dimensions of this predicament are fundamentally interconnected, such that one cannot think through and settle the matter by oneself. The categories in terms of which I think of myself (*as* a citizen, *as* an aspiring good parent, etc.) are public. No one has sovereign control over what it means to be a good citizen, or a good parent. If you think you would fail as a parent if you did not stimulate your kids to think independently, it would be inconsistent to hold that others who indoctrinate their children to worship the leader are good parents. The first-personal question of who I am is therefore also a second-personal question addressed to others. And this is not just a (intraperspectival) matter of who they are, from your own point of view, but also (interperspectivally) of who they take themselves to be, and take you to be. The vlogger who exhorted her male peers to take to the streets or forfeit their manliness is inferring an inconsistency between a key aspect of the self-understanding of many of her addressees and their failure to denounce the regime. Someone who feels the sense of pride that she appeals to but wants to resist the pull of her inference will have to tell a different story about how his manliness is compatible with his stance toward the regime. The struggle for legitimacy at Tahrir Square was at least, in part, a struggle over the most cogent story

about who "we" are; cogent in the sense of resonating with who each of "us" takes themself to be in other respects.

At issue here are relations of material (in)compatibility among commitments, meaning that the validity of inferences depends on what the terms mean—and what they mean depends on the practices in which they have their point and purpose.[36] Drawing these inferences (from your commitments and theirs) is not just a mental exercise of tracing preestablished connections, which could just as well be performed in isolation and abstraction from a concrete situation. It is to partake in reshaping the meaning of the terms involved. To hang on to one's own acknowledged commitments in the face of significant disagreement is to venture to transform the practice of, say, citizenship (or parenthood)—striving to *make* subjection to this regime mean something different than it is taken to mean, by the regime, and perhaps the vast majority of its subjects. Inconsistency thus calls not only for reflection but also dialogue and struggle. The journalist Ashraf Khalil reports that during the reign of Mubarak, a commonly accepted stance toward the regime among Egyptians was to "walk next to the wall," meaning: "Keep your head down, feed your family, and don't stick your nose in affairs of governance that are above your station." Only a "noble fool" would believe he could change a system that was "rotten to the core."[37] Our man with the sign appears to be contesting precisely this attitude. In taking a stance against the regime *as*, purportedly, an Egyptian, he is trying to relocate "Egyptianhood" within the space of reasons. He claims that Egyptianhood is incompatible with living in fear, which also implies that anyone who does not overcome his or her fear and join him on the square is not a true Egyptian.

5.8.2   Integrity

Judging well is not just a matter of coping with incompatibilities among the contents of one's various self-conceptions. It is also a matter of concretely manifesting one's identities in the world. Judgment is compromised in this respect if your judgmental activity does not, in fact, contribute to enacting who you take yourself to be, both at individual and collective levels. By integrity, I mean the extent to which your judgmental comportment contributes

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[36] Brandom, *Making It Explicit*; Laden, *Reasoning*; Kukla and Lance, *"Yo!" and "Lo!"*
[37] Khalil, *Liberation Square*, 22, 123.

to constituting and characterizing your selfhood as you envision it: being in-
volved in coming to be who you take yourself to be. Integrity as a quality of
judgment is thus closely related to the integrity of the self that it ventures to
constitute or sustain.

This draws attention to the way in which judging makes an appearance.
Salient about the protesters' gambit to recharacterize Egyptianhood is not
just what they are doing, or proposing to do, with the content of what it
means to be an Egyptian. The struggle at Tahrir Square was also about what
sense of "us" would be effectively enacted. Responding to somebody else's
call, scraping together one's courage, and going out to proclaim that "the
people demand the fall of the regime" is a distinctive form of comportment,
and comporting oneself a certain way is judging in a certain manner. Judging
legitimacy, understood as a practice, has an inherently public character. As
governed subjects, we comport ourselves toward the regime in *some* manner,
and our doing so contributes, actively or passively, to the preservation, trans-
formation, or subversion of the collective the regime engenders. Going about
your daily business in a manner consistent with what the regime expects
of a loyal citizen is a way of enacting its characterization of citizenship. It
is not just a matter of opinion; if you *think* that this is a horrible regime, but
do not say or do anything that entitles anyone else to interpret you as dif-
ferent or other than the regime takes you to be, your comportment, in effect,
reiterates the identity attributed by the regime. The sense of publicity at issue
here is not the ideal notion of being transparent and acceptable to all rea-
sonable subjects, but of making an appearance to others, being interpretable
as taking a stance toward the regime. There is, of course, potential political
significance in forming opinions, but unless that opinion somehow makes
an appearance to someone else (even if only, perhaps, in bedtime stories), it
does not partake of judgment, on the view presented here.

Whether you effectively come to be who you take yourself to be depends
fundamentally on others. If you seek to dissolve the collective that the re-
gime engenders, there had better be real hope that you can sustain your
alternative identity. This commits you to some strategy of mobilization or
self-preservation to carry through your alternate take on who "we" are.[38]
Integrity therefore involves anticipating how people will respond and what
they can be persuaded to do. Good judgment calls for a sensibility to the
consequences of one's actions, attunement to the balance of forces, and

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[38] This thought draws on Meckstroth, *The Struggle for Democracy*.

acknowledging the strength of bonds of affiliation. One cannot expect that Egyptians will suddenly renounce their national affiliation *en masse* and think of themselves as world citizens. There is something inevitable about Egyptianhood being a key reference point in this context. It cannot be wished away, although it could be made an object of long-term political struggle.

There is an affinity here with the associative picture, in that good judgment should be true to the relations of power and commitment subjects find themselves in. But whereas associativism is backward-looking, because it takes collective selfhood as an achievement prior to judgment, integrity is conceived here as *anticipatory*, as a manner of involvement in a process of becoming—and hence ineluctably insecure and uncertain.[39] Judging well in this respect is not a matter of recognizing, in a mental act, what is already in existence, but of partaking in collective action to further the coming-to-be of the self one envisions. There is inherently always a risk that the venture of collective self-constitution or self-transformation may not succeed. Who you become may not necessarily be who you wish yourself to be. Subjects and authorities do not stand on an equal footing in terms of the resources they can muster; typically, these are stacked in favor of the regime, who may have control over media, education, and other resources to mobilize people's sense of belonging, or their fear. Rejecting the legitimacy of the regime and constituting a countercollective require massive mobilization. You may find that you cannot sustain your interpretation of what citizenship means, in the face of overwhelming rejection of that interpretation by others. In the absence of some strategy for overcoming these obstacles, sticking with your interpretation of collective selfhood regardless is wishful thinking. Integrity may then require taking yourself to be who you are taken to be, rather than who you wish to be.

Here too, dilemmas are at the heart of judgment because what will turn out to be a viable sense of selfhood cannot be certain in advance. Failure to muster the courage to enact who you take yourself to be would be a lack of integrity. But demanding the fall of the regime carries great risk, both to oneself and others. So keeping one's head down, "walking close to the wall," could be a thoughtful Hobbesian strategy for survival. Of course, the whole question is *who* thereby survives. It may not be possible to reconcile one's sense of oneself with what one deems possible. Perhaps the most tragic manifestation of this was the act of judgment that inspired many Tahrir Square protesters: the

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[39] I owe the notion of integrity as anticipatory to McFadden, "The Weight of Freedom."

self-immolation of Mohamed Bouazizi in Tunisia. Although his destruction of his own body could be interpreted as a desperate abdication from self-hood altogether, Banu Bargu makes a compelling case for understanding it as a profoundly political act. By radically refusing to be who the authorities took him to be, Bouazizi's act "calls for justice precisely at the same time as it underscores the impossibility of its realization under existing conditions." His judgment, apparently issuing from utter despair of achieving a personal and political selfhood worth sustaining, paradoxically enacted a form of self-hood deemed impossible in the moment, a self that "asserts agency at the moment of its abnegation."[40] Perhaps part of what inspired so many to overcome their fear and take to the streets was that to them, in the face of his radical "*I* cannot live like this," to continue being defined, as before, by the regime, would have been to admit that, apparently, *they* could.

5.8.3   Responsiveness

Even if we were to suppose that one's judging contributes, together with others, to sustaining a collective that is in sync with one's sense of who one is as a person, one's manner of judgment may still be compromised in another respect. There is always potentially a tension between "I" and "we"—whether "I" (still) genuinely belong to "us" (and to whom that is, exactly)—and between "me" and "you"—between who *I* take myself to be and who *you* take me to be, and vice versa. This inherent questionability can be manifested in a disagreement with someone else, or it can appear simply in recognizing that the future is uncertain, and hence, that one could always come to see, or be brought to see, oneself differently. The question "Who?," from a first- and second-personal standpoint, is potentially transformative.

To this condition of questionability, which is at the heart of the agonistic picture, one can relate practically in different ways. We already encountered these two divides (I–we and I—you) when discussing consistency. At issue now, however, is not the content of one's identities, nor their actual manifestation, but rather the manner in which one bears them. To see this, we need to consider something that was presupposed in the discussion of consistency. What makes it the case that a difference between who I take myself to be and who you take me to be (as it might be observed from a

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[40] Bargu, "Why Did Bouazizi Burn Himself?," 33.

third-person viewpoint, say) will *register* first- and second-personally *as a* disagreement, and prompt me to articulate, compare, and perhaps revisit my commitments? Discrepancies between our perspectives appear to me as calling for a response only on the assumption, first, that I attribute to you a certain standing, treating you as a judging subject with a distinct perspective on the same situation, whose commitments are to be kept track of; and second, that I am willing to perform a kind of self-distancing to consider how things appear from your point of view and how that bears on my own commitments.[41] Both assumptions involve acknowledging a lack of sovereignty of my own point of view. And, third, all this presupposes that we share a space in which our perspectives intersect and appear to each other as perspectives on the same (i.e., each other's) words and deeds. None of this can be taken for granted in struggles for legitimacy. A regime might operate according to its own systemic logic, treating you differentially according to whether it classifies you as a loyal subject or a traitor, as if on autopilot— oblivious to who you take yourself to be, registering nothing you say or do to as an occasion for questioning.

By responsiveness, I mean to designate modes of comporting oneself that open space for a confrontation of perspectives to take place, the outcome of which is not fixed in advance.[42] This involves practically manifesting the attitudes just described, treating oneself and others as capable of judgment. It could also involve political action to elicit such attitudes from others (despite themselves perhaps). One's judgment is compromised for lack of responsiveness if the way in which one bears one's identities preempts consideration of certain aspects of them or forecloses questioning by (certain) others. This could take two forms, which we can label 'conventionalism' and 'unilateralism.' Conventionalism would be to unthinkingly take oneself to be who one is taken to be by the regime or one's fellows, failing to countenance any potential gap between I and we, foreclosing the possibility of coming to think about oneself differently. This would still be a manner of judging, albeit thoughtless, since you are still swept along in a practice of self-constitution and self-transformation. You become, as it were, part of the regime's autopilot circuitry. Unilateralism would be a manner of treating others such that

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41 Cf. Havercroft and Owen, "Soul-Blindness, Police Orders and Black Lives Matter."
42 The impetus for opening and maintaining space for questioning is central to agonistic writings. See, for example, Honig, *Emergency Politics*; Lindahl, *Authority and the Globalisation of Inclusion and Exclusion*; Markell, *Bound by Recognition*; Norval, *Aversive Democracy*; Owen, "Criticism and Captivity: On Genealogy and Critical Theory"; Rancière, *Dis-Agreement*; Van Roermund, *Legal Thought and Philosophy*.

nothing they could say or do would be taken as an occasion for questioning, acting as if the question who I am and who we are is fully settled, treating one's own self-conception as a fixed reference point in one's interactions. The former mode of self-assertion places one's own critical capacities out of play and the latter insulates one from other perspectives. Both are manners of judging that fail to register anything as an occasion for questioning. To do so is to feign invulnerability.[43] This invulnerability is illusory, for it presupposes a degree of control over selfhood and character that is inconsistent with the plurality of those involved in carrying it through. This is, in effect, to deny that one is involved in judging—taking as given what is politically at stake. That is why responsiveness is to be considered a quality of *judgment*.

What mode of bearing one's identity is displayed by the man with his sign? On the one hand, the sign could be read as a simple assertion of a fact, reporting his discovery of the true, antecedently given meaning of Egyptianhood, intended to settle dispute rather than invite genuine engagement. But, for starters, the simple act of appearing on the square bearing a sign is quite literally opening up a space where anyone can approach him and ask what this is supposed to mean. Contrast that, for example, to an assertion of the fearless character of the Egyptian people in a textbook for little children. That assertion would be involved in the same practice of collective self-characterization, but the manner in which it is asserted is not one that invites a reflexive attitude toward one's own identification but of unilaterally inculcating an identity as taken-for-granted. Moreover, the temporal transition is important: I *used* to be afraid, *now* I am Egyptian. This does not only cast Egyptianhood as incompatible with living in fear, it also implies that the man now sees *himself* as not having been truly Egyptian before he overcame that fear. This could be read in different ways. Perhaps he has always felt that Egyptianhood was incompatible with living in fear, only he could never really regard himself as Egyptian before. Alternatively, perhaps he has had a kind of epiphany: only now has it dawned on him what Egyptianhood truly means and feels like, as if saying: "I was never really who I took myself to be—I see now that what I thought it meant to be Egyptian is actually quite different." Either way, the claim acknowledges that the relation between "I" and "we" is questionable. The sign exemplifies the transformation of his self-understanding and invites others along. Anyone who took their own Egyptianhood for granted and pays attention to the sign is now prompted to

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[43] Cf. Markell, *Bound by Recognition*.

examine the sign's implication that you aren't truly Egyptian as long as you're living in fear.

At the same time, by announcing his self-transformation as a matter of fact, he is taking an advance on the success of this venture, and issuing a kind of assurance that, if only they join him, they will come to share his point of view. Given what did happen in the years that followed—Egypt's slide "into the hands of the soldiers"[44]—it may seem, in retrospect, that these Egyptians have not managed to reconstitute what it means to be Egyptian and to stay in character. I do not know what became of this man. Perhaps he has concluded that he can no longer regard himself as Egyptian, or that Egyptianhood didn't mean after all what, for a moment, he came to think it meant. In any case, the practice of judgment is still ongoing, and partaking of it in a reflexive manner calls both for realistic appraisal of the situation, and acknowledgment that the outcome is open-ended.

5.9   Conclusion

I have proposed a pragmatic view of the significance of identity for political legitimacy, which casts the question of legitimacy as an existential predicament. A struggle for legitimacy is a struggle over the constitution and characterization of collective selfhood, and judging legitimacy is to partake in such a struggle. On this picture, it matters profoundly who does the judging: from a practical point of view, the question of legitimacy places one's selfhood and character in question. Judging legitimacy is to partake in a practice self-constitution and self-transformation, which makes or breaks relationships, shapes who you are in both the first-person singular and the first-person plural, and is inherently open-ended. From this perspective, any attempt to codify criteria of legitimacy is at best a partial and provisional attempt to grapple with this existential predicament—a move within a practice of self-constitution and self-transformation, not a not source of knowledge that solves the problem.

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[44] Kirkpatrick, *Into the Hands of the Soldiers.*

6

Judgment as Timecraft

6.1 Introduction

Our ambitions throughout Part II have been to examine the limits of
normativist theories of political legitimacy, to reveal what is occluded by
their preoccupation with codifying criteria, to bring into view the concrete
dilemmas involved in judging legitimacy from a practical point of view,
and to reorient our theorizing toward the modes of activity and involve-
ment through which one can engage the question of legitimacy thought-
fully. The basic diagnosis of the preceding two chapters was the same: in
construing judgment narrowly in terms of the application of given princi-
ples, normativist theories treat as given to judgment key elements of what is
at stake in it, abstracting from rather than confronting political disagreement
and uncertainty. What the regime is like, and who "we" are in relation to it,
are part of what is in question, not grounds for the correct answer. Judging
legitimacy is both a practice of portraying power and a practice of self-
constitution and self-transformation.

This last chapter extends this line of argument—this critique of the myth of
the given—along one more axis, and attempts to further flesh out what is in-
volved in judging legitimacy from a practical standpoint. Having considered
the role of the *object* of judgment and of the identity of the judging *subject*
in judging political legitimacy (*who* judges *whom* (or what)?), the present
chapter tries to come to grips with what we might call the *force of surround-
ings*: *where* and *when* judgment occurs. It argues that the historical-material
setting in which the encounter between subject and authority is located is not
simply a fixed backdrop against which judgment takes place, but a dynamic
element in the struggle. To put it dramatically, what is at stake in judging
the legitimacy of a regime is the world: judging is a practice of timecraft and
place making.[1]

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[1] Or a "world-building practice," as Linda Zerilli proposes. Zerilli, *A Democratic Theory of
Judgment*.

In what follows, I shall focus on the temporal dimension, approaching the question of how surroundings figure in judging legitimacy by considering the significance of events. References to historical and current events abound in the various struggles for legitimacy that we have come across thus far. The confrontation between the radical left and the establishment of the West German *Bundesrepublik* was in large part about the legacy of the Second World War and the Holocaust. Egyptians who demanded the fall of the regime in 2011 took their bearings from the blaze of a Tunisian fruit salesman, Mohamed Bouazizi, who had set himself on fire. Two years later, masses of Egyptians rose up again to demand the fall of Mubarak's successor, Mohamed Morsi, claiming that he had violated the spirit of the revolution that brought down Mubarak—while Morsi justified his own claim to legitimacy by purporting to safeguard that same revolution. More enigmatically, republicans protesting the inauguration of the Dutch king on Dam Square invoked the hashtag "It is 2013"—not the name of a particular event, but a reference to a moment in time nonetheless. Contested legitimacy coincides with contested times and contested events. How should we make sense of this apparent connection between time and legitimacy? What is the significance of what happened in Germany during the Second World War, or at Tahrir Square in 2011, for the legitimacy of regimes at a later time? And what could be the point, in protesting against the monarchy, of reminding us of the date?

To get a grip on these questions, we need to think through the relations among political legitimacy, judgment, and time.[2] As before, the kind of judgment at issue is the challenge of taking a practical stance toward the regime. What is involved in distinguishing in practice whether a regime is legitimate or not? Specifically, for this chapter: How do events figure in such judgment? I start by examining how this appears from a normativist point of view (Section 6.2). The significance of history for legitimacy is typically framed as a question about the appropriate scope of criteria of legitimacy: Should political theory aspire to articulate timeless principles (universalism), or can it

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[2] The single study I have found that speaks directly to the relations among political legitimacy, judgment, and time is an essay by Melissa Lane (on which I draw in the last section), which traces historically the ways in which "conceptions of time may be invoked to explain and legitimate, or delegitimate, structures of political authority." Lane, "Political Theory and Time," 235. There is, of course, a much wider literature on the significance of time and history for political theory more broadly, for example, Pocock, "Political Ideas as Historical Events"; Hutchings, *Time and World Politics*; Cohen, *The Political Value of Time*; Mills, "The Chronopolitics of Racial Time." In recent years, reflection on time has been central to postcolonial thought and environmental philosophy, as noted below.

claim validity only for a particular historical moment (contextualism)?[3] As we shall see, neither view can really see any significance for events from the practical point of view of a judging subject, confronted by power. Both forms of normativist judgment occur seemingly out of time and place—it does not really matter who judges where and when. This leaves no room, within the horizon of judgment, for the following questions: Where and when are we? What is happening here?

By contrast, the view I propose locates these questions at the heart of judgment. In taking a stance toward the regime, a judging subject responds to and partakes in events. Such judgment is therefore exposed to the disagreement and uncertainty to which these questions ("What is happening? When are we?") give expression. Part of the complex of activities that judging the legitimacy of a regime consists in is a dimension of political activity that I shall label 'timecraft.' I begin developing this view (in Section 6.3) by elaborating the temporal structure of the conception of judgment as practice proposed in Chapter 3. That gives us a way of thinking of judgment as standing in an open-ended practical relation to events—I call this judgment 'in the present progressive.' The next step is to examine the forms of practical comportment in and toward time that constitute judgment. This will require grappling with the ways in which multiple timelines intersect and clash in an encounter between subjects and authorities. Section 6.4 introduces some vocabulary for conceptualizing political time. Section 6.5 develops the notion of timecraft theoretically, and Section 6.6 illustrates it with concrete examples. Finally, I consider what constitutes good judgment in relation to time (Section 6.7).

6.2 The standard picture: Events as fixtures

Let us begin once more with the principle–application model of judgment expounded in Chapter 1. This view leaves two potential points of entry for events to bear on the legitimacy of a regime: one could historicize the facts that constitute the circumstances of application for criteria of legitimacy, and one could (also) historicize those very criteria themselves. Let's call the former "universalist normativism" and the latter "contextualist normativism," (see Chapter 1, Figure 1.1.)

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[3] See Floyd and Stears, *Political Philosophy versus History?*; especially Kelly, "Rescuing Political Theory from the Tyranny of History."

Which facts about a case are salient for legitimacy may depend on what specifically happened in that particular situation. The extent to which this is so depends on the content of the criteria. At one extreme is the *a priori* anarchist view that *no* form of purported political authority can, in principle, be legitimate; or conversely, the authoritarian view that *any* de *facto* authority is legitimate.[4] On such *a priori* universalist views, events make no difference, in principle, to whether authorities are legitimate or not, although of course contingent circumstances may affect strategic calculations as to whether resistance is opportune. A regime's origins are irrelevant to its legitimacy. Most theories allow more leeway for judgment to vary according to circumstance. For consent theories, for example, the correct outcome of judgment depends on recognizing the occurrence of a certain carefully circumscribed type of event: the voluntary expression of consent on the part of those subjected to the regime. Hence, the theoretical importance, for theories of actual consent, of carefully defining what exactly counts as a genuine expression of consent. For *a posteriori* universalism, contingent aspects of a situation, shaped by events, shape the circumstances of application for principles of legitimacy, but not their meaning and justification.

Two points need to be highlighted to bring out the temporal structure of judgment presupposed in this picture. First, at the moment of judgment, the meaning of events is treated as fixed. Events have brought about a certain state of affairs, the particulars of which judgment is then to subsume under the general norm. Of course, things might change, and then one takes stock of the new situation and judges again. This chronological sequencing is clearly exhibited by Onora O'Neill (as we have already seen in Chapter 1):

> When we act we may as a preliminary matter have to decide how to view the situation in which we already find ourselves. . . . But even when . . . we have determined how to view the situation, we will still need to decide what to do: and that is where practical judgement does its work.[5]

Practical judgment, on this picture, is quite literally an afterthought.

Second, the categories that specify which kind of event is relevant are supplied in advance of judgment, codified in the criteria of legitimacy. Whether events of this particular type (expressions of consent, for instance)

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4   For example, Wolff, *In Defense of Anarchism*; Hobbes, *Leviathan*.
5   O'Neill, "Normativity and Practical Judgement," 402–03.

happened or not determines which judgment is correct (that the regime is legitimate, or illegitimate). Judging correctly in particular cases requires assessing whether events of the relevant kind have taken place. Of course, criteria cannot determine their own application, and judgment is needed still to determine whether the particulars of the case count as events of the relevant kind. But universalist normativism only has room, at the level of application, for what is 'ordinary' in the sense of fitting the terms of the theoretically codified criteria (e.g., the absence or presence of consent), not for something unexpected that might challenge those terms.

This stands in stark contrast to a tradition of thought, on which I draw, which stresses the inherent contingency and unpredictability of human affairs, and for which the possibility of radical novelty is fundamental. The term 'event' is reserved there precisely for moments of rupture that challenge the terms of our understanding: not just anything that happens is an event; an event is a break with a past.[6] "Events, by definition, are occurrences that interrupt routine processes and routine procedures," says Hannah Arendt.[7] The paradigmatic example is a revolution. Genuine events are unanticipated and inherently unpredictable, and because they potentially challenge the terms of our understanding, it is impossible to codify a response to them in advance. For Arendt, therefore, *judgment* is called on to respond to events, in a sense that cannot be understood in terms of applying given principles.

Of course, the universalist could say that, faced with a seemingly unparalleled situation, we should suspend judgment. Criteria of legitimacy, and the terms in which they are cast, are subject to critique and revision—but to do so is to engage in justification, not judgment. For the universalist, there is no problem, in principle, with the idea that norms could be codified theoretically for every possible political situation, even if this is an ideal no actual theory lives up to. A theory of legitimacy that seems to be inapplicable to a novel situation is just not complete. Notice, though, that this places the burden of responding to events entirely on moral theory and empirical enquiry. Practical judgment so conceived is not equipped to respond to events, let alone radical novelty—it is incapable of surprise.

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[6] By contrast, Donald Davidson, for example, considers anything that happens an 'event'; it a basic ontological category, next to things, with which the universe is replete. Davidson, *Essays on Actions and Events*.

[7] Arendt, *Crises of the Republic*, 109. Hans Lindahl explains this concept of event with high precision in Lindahl, "Possibility, Actuality, Rupture." See for a condensed statement: Ronchi, "The Virtues of the Virus." See also Zerilli, "Castoriadis, Arendt, and the Problem of the New"; MacKenzie, "What Is a Political Event?"; Totschnig, "What Is an Event?"

The significance of events for political legitimacy goes somewhat deeper if one believes that they affect the content and justification of principles of legitimacy, not just their circumstances of application. According to contextualist normativism, norms are to be justified with reference to a particular moment in history. It is simply anachronistic, one might think, to judge the ancient Greek polis by reference to "today's" normative standards. Criteria of legitimacy need to be historically sensitive and attend to the particularity of the situation.[8] So a compelling justification for such standards must rely on an account of where and when the struggle for legitimacy at issue takes place.

Contextualism so conceived differs from universalist normativism in espousing a historicized account of justification, but not judgment. One needs, prior to judging legitimacy, to take into account which context one is talking about and grasp the criteria operative in it. The time and place of the struggle for legitimacy matter, but that is not necessarily the same as the time and place of judgment. This last point is crucial. Universalist and contextualist normativism have in common that the time and place of judgment split off from the temporality of the situation in question. Applying a normative standard to a particular case could, in principle, be done from any point in time, provided the judge has epistemic access to the requisite facts and norms. It does not matter where or when judgment occurs—the seminar room or the barricades.

Even though contextualist normativism affirms from the very start the significance of historical change, the problem of novelty is, if anything, even more pressing for contextualists. Contextualism assumes as given to judgment a particular sorting of historical time into distinct epochs, each with a particular set of criteria belonging to it. If we note that struggles for legitimacy are often also disagreements about appropriate standards of legitimacy, then contextualism suggests that some such standards are "timely" and others not. Some of the parties in the struggle are not simply wrong but "out

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[8] Probably the most prominent exponent of contextualism about legitimacy is Bernard Williams, who sums up his view with the formula: "LEG + Modernity = Liberalism." Williams, *In the Beginning Was the Deed*, 9. What "makes sense" as a convincing account of political legitimacy depends on the historical context, and "modernity" constitutes a historical context in which only "liberalism" (broadly construed) can be considered acceptable. It should be noted, however, that Williams did not attempt to theoretically justify this notion of liberalism in any detail and would probably not subscribe to the division of justification and application characteristic of what I call normativism. David Owen proposes to read Williams's argument as a "vindication" instead of a justification: "The thought here is that there is a vindicatory case to be made for liberal society, acknowledging its many and varied imperfections, as being better at protecting those subject to its authority from a range of threats to life and liberty that emerge with and from the modern state." Owen, "Realism in Ethics and Politics," 86.

of time." If there is a dispute about whether the monarchy is "of our time" or not, for example, the normativist picture has no room to cope with this at the level of judgment, which is after all just a matter of applying criteria. So we must suspend judgment and shift to the register of justification, to work out the true normative core of the "modern era." Again, there is no room, at the level of judgment, for thinking of responding to novelty as a *practical* problem.

To sum up, the picture of judgment as norm application leaves room for two senses of historical contingency. Contextualists and universalists alike can accommodate the contingency of the temporal foreground, the immediate past that gave rise to the state of affairs under consideration. Contextualists allow, in addition, for the salience of a contingent historical background—a significant past that informs the criteria operative in the situation in question. But judgment as such responds to neither sense of contingency. Rather, judgment presupposes that the answer to the questions of "What happened here?" or "At what historical moment does this encounter take place?" is already available. The crucial work of interpreting events takes place at the levels of justification and empirical enquiry, prior to judging legitimacy. Events appear, from a practical standpoint, as fixed reference points, which bear on judgments of legitimacy in a mediated way, that is, insofar as they affect the empirical and normative knowledge requisite for judgment. In neither view do events impinge directly on judgment itself. But in lieu of having decisively completed the project of spelling out norms for any contingency (even aside from whether or not such codification is possible at all), it would seem desirable to have a conception of practical judging that opens avenues for improvisation that enable us to practically cope with disagreement and uncertainty, rather than remain perplexed until we have a theoretical solution.

In the same swoop in which it insulates judgment from history, this picture also insulates history from judgment. Because it is indifferent about the time and place of judgment, it also sees no inherent connection between judgment and action—judgment as such is historically inert. To become politically efficacious, it needs action as a supplement; it is not itself a form of action, but a mental operation.[9] Was Morsi "safeguarding" or "violating" the

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[9] This suggests a third way in which events might matter on this picture: not just as input for judgment, but to reinforce its output, helping to move from judgment to action by inspiring hope and confidence. See Ypi, "On Revolution in Kant and Marx."

"spirit of the revolution?" This dispute can be read in both contextualist and universalist terms: the revolution may be seen as inaugurating a new era, or as embodying timeless principles. Either way, the dispute appears as one for theory to resolve in advance of judgment. What was the original meaning of the revolution? What were the principles it sought to instantiate? Either way, the true meaning of the revolution is a fact to be recognized correctly. Judgment makes no contribution to shaping the meaning of the revolution.

6.3 Judgment in the present progressive

A genuinely different view can emerge only when we set aside the norm-application model. This section begins to develop an alternative by exhibiting the temporal structure of the notion of judgment presented in Chapter 3. Recall that judgment was conceived there as a continuous praxis rather than a singular moment of decision. Particular judgments are seen as moments in an already ongoing and open-ended practice, rather than discrete deployments of a mental faculty that are severally brought to a close and then strung together. Since the act of judgment is no longer conceived as a self-contained episode, the manner in which events impinge on it needs to be reconsidered also.

Two points are essential here. First, in a parallel move to the two preceding chapters, we can construe the activity of interpreting and responding to events as integral rather than prior to judgment—that is, as part of the complex of activities that judging legitimacy consists in. The uptake of events is now understood as constitutive of judgment rather than preliminary to it. Thus, our grasp of "what happened here" and "what our time is like" is not the ground from which judgment departs, but part of what is at stake in it.

Second, because judging is conceived as an ongoing activity (or, more precisely, a complex of activities), events can be considered not just in the present perfect, but also in the progressive aspect: as raising the question "What *is* happen*ing* here?," not just "What has happened here?" Since judgment is temporally extended, events in the temporal foreground—which can now appear as truly *current* events—intervene in the course of judging, potentially unsettling one's stance toward the regime. The significance of the event in question is not fully determined since the event is still in progress, and judgment is involved in rendering it more determinate. The contingency of the present, and its accompanying uncertainty about what is happening

and could happen, now call for a judgmental response. Judgment, in turn, partakes in the unfolding of events, insofar as that unfolding depends on the judging subject's uptake. Meanwhile, events in the temporal background are retroactively taken up and carried through, reinterpreted and transformed, forgotten, or reignited in judgment. The past is contingent not just because the course of history might have been very different, but also because the significance of that past depends on our own ongoing actions and attributions of meaning. If, on the standard picture, events lie still in the past—always prior to judgment—here they live on in and through judging.

Thus, in stark contrast to the preceding, decision-centered picture, a practice-centered view of judgment makes it possible to think of judgment as standing in an ongoing and open-ended practical relation to events—*practical* in the twofold sense of *comporting oneself towards* and *partaking in* events. Receptivity to events is not outsourced to activities external to judging legitimacy but located at its heart. By the same token, partaking in the course of events is not a further step, beyond judgment: judging is already acting. This evokes the public character of judging politically: our uptake of events partakes in their unfolding. (As noted in Chapter 3 with reference to Arendt, 'judgment' that does not make an appearance lacks worldly reality.)

To illustrate, let's go back to the example, from Chapter 3, of the two of us strolling through the city center in search of a suitable place to share a meal. I suggested there that we think about judging restaurants as a temporally extended activity: judging occurs throughout our stroll (and continues afterward), not at intermittent decision points in front of this or that establishment. Now suppose, in the course of our leisurely walk, you feel a few drops of rain on your cheeks. An event—admittedly, one that is rather mundane—intervenes in the course of judgment and calls for a response.

On the principle–application model of judgment, whether the weather makes any difference to our judging of the next restaurant depends on the criteria at our disposal. If it's just about the quality of food, then it would appear we should take no account of the weather at all. If it is about expected utility for us, then we first need to gauge the likelihood and weigh the discomfort of getting wet; now suddenly a nearby place with mediocre-at-best pub food appears much more fitting than it did at first. If we are caught by surprise because our criteria do not seem to speak to this situation, we can only stop in our tracks perplexed, suspend judgment, and reconsider our criteria before moving on to assess the nearby restaurants. If we were really to stick with this picture of judgment in the face of disagreement or

uncertainty—which presumably no sensible real-world actor would do—we would have to settle on a set of explicit criteria before we can move on. (That, of course, would surely get us wet.)

By contrast, judgment as praxis takes events in its stride. To gauge whether the first drops announce a drizzle or a downpour, you cast your glance at the sky. Your "uh oh . . . " draws my attention to the storm clouds above. With renewed urgency, we scan the vicinity for establishments, implicitly taking for granted that neither of us wants to remain outside for much longer. We both eye the pub on the corner; finding out a little later, when ordering at the counter, that we did so with conflicting plans: you want to go for the daily dish, while I just order a drink. At least we are dry now, but we do have a problem: dinner or just drinks for now? We argue for a moment. It becomes evident that, while you are happy to relax your cuisinal preferences, I considered the pub merely as temporary shelter. Rather than attempting to resolve our dispute in favor of either drinks or dinner, we take out our phones to see how long this weather is going to last. While at it, we might as well check the map for other places nearby. This might have given us an option we can both live with, even without settling on a shared set of criteria. But tonight, we are not so lucky. We find no easy alternative, we are both hungry, and it looks like the weather isn't going to clear up any time soon. Things come to a head when I persist in refusing to eat pub food, while you really do not want to get wet. In the end, I decide to brave the storm, since for me, the whole point of going out in the first place was to have some fancy food; leaving you disillusioned, as what you thought mattered most was the company—"What was I thinking," you say to yourself, "that I might become friends with this stubborn snob?"

The crux is this: on our picture of judgment as praxis, all this activity—looking at the sky, checking our phones, engaging each other in argument, and so on—is *judgmental* activity, bearing directly on our choice of restaurants, and prompted by an unanticipated event. Rather than suspending judgment until we have settled on suitable criteria, judgment involves us with the world, events, and one another. There are criteria in play here, too, but they do not become fully explicit and may be adjusted as we go along. There is, of course, room to engage in deliberation, but doing so does not lift us out of the register of judgment into something other than judging. Moreover, other forms of judgmental performance could be more fruitful than trying to justify criteria.

Of course, rainfall is hardly an extra-ordinary event (at certain times, in certain places). Countless alternative scenarios could be imagined of events that would intervene and throw judgment off course (an emergency phone call, coincidental run-in with a third friend, etc.). But this suffices to highlight the key point: judgment responds to events but is also involved in their unfolding. Of course, the rain falls either way, but its significance for our choice of restaurants depends on whether and how we respond to it, and also on whether and how we have anticipated or prejudged the situation: the rain would not have interrupted us had we brought an umbrella.[10] Instead of sending us on a quest for theoretical knowledge, this picture draws attention to the practical significance of anticipation and improvisation in response to the unexpected.

One further point to emphasize pertains to the contingency of the temporal background, as opposed to the foreground of current events. Our judgmental activity here and now also takes up and reshapes the past. What had appeared as the beginnings of a friendship, when we first met, turns out to have been a dead end. Or imagine, alternatively, that the rain lands us not in a shady pub but in a particularly intimate setting, one that we would otherwise have avoided as not befitting the tone of our relationship. And suppose the setting helps to bring out new and unanticipated feelings toward one another. Our newfound intimacy retroactively shapes what happened in our first encounter, which perhaps, eventually, becomes the subject of lore; "when we first met." As colleagues become friends become lovers—or, as in our scenario above, become disillusioned with each other—the history of how we ended up here attains new meaning.

The two senses of contingency distinguished before—the background of a historical past and the foreground of current events—here also enter the picture. But rather than informing two distinct forms of knowledge that precede judgment and enable it, as on the principle–application view, here events impinge directly on the activity of judging. In the temporal foreground, we respond to (or ignore) current events; stuff that occurs here and now is rendered thematic or ignored. Furthermore, what happened in our past takes shape retroactively, and judgment partakes in this shaping by reaffirming or altering an event in the background as meaning this-or-that. In neither sense is the meaning of the event sorted out prior to judgment and then given to

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[10] It is worth recalling Lindahl's pithy formulation: "judgment rejudges." Lindahl, "Representation Redux," 486.

it; rather, part of what judgment consists in is the process of articulating the meaning of events. Judgment thus conceived responds to and is part of the course of events. Events are not fixtures against the background of which our judgment takes place. They live (or cease to) in judging.

We can begin to see how this bears on the question of legitimacy if we look again at the confrontation of the West German *Bundesrepublik* and the radical left in the late 1960s and 1970s. An early and arguably defining moment in the history of this struggle occurred on June 2, 1967, in West Berlin, when a student, Benno Ohnesorg, was killed by an undercover policeman in a clash between demonstrators and the police. The left's subsequent radicalization rendered the event highly politically significant, though it did so in very different ways from different points of view. Indeed, one militant faction, the 2 June Movement, named itself after the event. For them, and for others among the left, the killing of Ohnesorg was a moment of epiphany or aspect change (or it appeared so in retrospect), at which the regime's democratic facade lifted and revealed that the official beginnings of the *Bundesrepublik*, enshrined in the post–Second World War constitution, did not constitute a true beginning but hid an underlying continuity with the Nazi regime. Rejecting the legitimacy of the *Bundesrepublik* then became part and parcel of opposing the older generation and its responsibility for the Holocaust.[11] Historical experience framed current events on the other side of the political spectrum as well, though in the opposite way. The establishment invoked the fall of the Weimar Republic as a justification for their heavy-handed reaction to dissent. They perceived the radical opposition as an existential threat in part because of the proven fragility of democracy in the Weimar Republic.[12] The constitutional democratic order needed defense mechanisms against subversion, what was referred to as "militant" or "resilient" democracy. In this light, the killing of Ohnesorg would appear as just an unfortunate incident, not a political revelation.[13] As the example illustrates, taking a stance toward the regime is, in part, a matter of comporting oneself toward events, including events taking place in the temporal foreground, here and now, and in the historical background.

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[11] Kundnani, *Utopia or Auschwitz*.

[12] "Memories of the collapse of the Weimar Republic and the rise of Nazism led the founders of the Federal Republic to believe that if it were to survive, the new democracy had to be aggressively intolerant of those who threatened it." Varon, *Bringing the War Home*, 255.

[13] Pekelder, "From Militancy to Democracy?"

6.4 Multiple temporalities: Timeframes and registers

I have proposed that we think of judging legitimacy as a temporally extended and open-ended activity, and argued that this enables us to see judgment as practically related to events instead of treating events as fixtures. But "practically related" in what ways? What forms of comportment toward events does judging legitimacy involve? And what does it mean to perform them well—in other words, what does *good* judgment consist in? Before we can answer these questions, we need a better grasp of the structure of political time. Key is the idea that there is no political time in the singular, but multiple temporalities.[14] The present section draws on work in political theory and the philosophy of history to explicate this idea.

Reinhart Koselleck's notion of the "contemporaneity of the noncontemporaneous" (*Gleichzeitigkeit der Ungleichzeitigen*) is helpful here.[15] Koselleck argues that historical time, as opposed to objective, natural time, is manifold. There is not one single dimension of historical past, present, and future, but "many forms of time superimposed one upon the other."[16] The present is an intersection of asynchronous temporalities; things being *at* but not *of* the same time.[17] Just consider the example of "It is 2013": the monarchy may no longer be "of this time," as republicans claim, but it is still around nonetheless. Apparently, the institution lives according to a time of its own, which does not fully chime with the republicans' clock.

This multiplicity of temporalities is bound up with the multiplicity of activities, practices, institutions, and stories, as well as the multiplicity of perspectives within them, which make up our world.[18] Temporalities intersect in particular situations. In some cases, they conflict, as might happen, as Koselleck says, when different generations meet in a family or workplace, "where different spaces of experience overlap and perspectives of the

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[14] This takes up Massimiliano Tomba's injunction: "Social and political change should be thought about and practiced in the tension of different temporalities and not as the goal of an inevitable historical development along the line of an empty and homogeneous concept of time" Tomba, *Insurgent Universality*, 11. Tomba traces this conception of time to Walter Benjamin, Ernst Bloch, and Karl Marx. See also Hutchings, *Time and World Politics*.

[15] Koselleck, *Futures Past*, 95.

[16] Koselleck, *Futures Past*, 2; cf. Jordheim, "Multiple Times," 505–06.

[17] Or, as Achille Mbembe puts it: "This time is not a series but an *interlocking* of presents, pasts, and futures that retain their depths of other presents, pasts, and futures, each age bearing, altering, and maintaining the previous ones." Mbembe, *On the Postcolony*, 16.

[18] "Historical time . . . , is bound up with social and political actions, with concretely acting and suffering human beings and their institutions and organizations. All these actions have definite, internalized forms of conduct, each with a peculiar temporal rhythm." Koselleck, *Futures Past*, 2.

future intersect, inclusive of all the conflicts with which they are invested."[19] What Koselleck does not note, but has been forcefully argued by postcolonial theorists, is that this friction shows up particularly violently in (post-) colonial settings. These thinkers insist on the multiplicity of temporalities in order to reveal the violence involved in narratives of unilinear modernization and the practices inspired and justified by them, which cast Europe as the spearhead of civilization and non-Europeans as "backward" or "underdeveloped" and entering "history" only at the moment of their colonization or enslavement.[20]

The idea of multiple temporalities is highly evocative, but it can also seem perplexing. For one thing, it seems one cannot explain temporal multiplicity without reference, tacit or explicit, to time in the singular. For *when* do temporalities collide? To generate friction, it seems multiple temporalities must come together in the same moment (Koselleck's *Gleichzeitigkeit*). So it seems we should think about time as a manifold rather than an irreducible multiplicity. Second, what differentiates times? At what level of analysis are they to be distinguished: the level of cultures, traditions, social groups, individuals?[21] Both issues are raised by a famous passage from Johann Gottfried Herder:

> In reality every mutable thing has its own inherent standard [Maß] of time; . . . no two things in the world have the same standard of time. My pulse, my step, or the flight of my thoughts is not a temporal standard for others; the flow of a river, the growth of a tree is not a temporal standard for all rivers, trees, and plants. . . . [T]here are (one can say it earnestly and courageously) in the universe at any time innumerable different times.[22]

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[19] Koselleck, *Futures Past*, 3.

[20] Hanchard, "Afro-Modernity"; Chakrabarty, *Provincializing Europe*; Mbembe, *On the Postcolony*.

[21] Different authors address this in different ways. While Koselleck, as we have seen, speaks of the different temporalities of particular actions and practices, Dipesh Chakrabarty differentiates more coarsely between "History1" (of capitalist modernization processes) and "History2" (of local customs) and Charles Mills, drawing on Zerubavel's notion of "mnemonic communities," locates differences in "racial time" among "human groups in relations of domination and subordination": "Societies constructed on an axis (even if one among others) of racial domination will generate 'racial times' both at the discursive and the material levels." Chakrabarty, *Provincializing Europe*; Mills, "The Chronopolitics of Racial Time," 314, 304; Zerubavel, *Time Maps*. As this last quote implies, answering this question is itself a timecrafting move: the divisions among (social-political) temporal registers are not simply given.

[22] Herder, *Verstand Und Erfahrung*, 120–21; following the translation in Jordheim, "Multiple Times," 512.

Herder speaks about plural measures or standards of time (*Zeitmass*, *Zeitmesser*), while also referring to an encompassing time of the universe. We are confronted with a multiplicity of manners of *keeping* time: temporally structured activities and practices of counting or measuring. Counting what? Not, for Herder, a single 'thing' that is uniform everywhere, but rather: rotations around the sun, alternations of day and night, heartbeats, and so on. For Herder (echoing Aristotle) time is a "measure of changes."[23] In allocating each "mutable thing" its own (measure of) time, Herder appears to give the most fine-grained answer possible to the question of what differentiates temporalities. Note, though, that even if everything has a timing of its own, that does not as such rule out the possibility of constructing aggregate-level measures of time for the relations between things as well, and indeed Herder himself attempted to construct a world history. What Herder rejects as "delusion (*Wahnbild*)" is the idea of a single, overarching measure, to which local times all add up or from which they are derived. Rather, temporal measures arise bottom up, from everyday patterns of change and practices of counting.

What this suggests, I think, is that the idea of multiple temporalities is best understood not as a claim about the metaphysics of time but about time-keeping practices, about ways of practically relating events to each other and carving up time quantitatively and qualitatively. I propose to differentiate temporalities along two axes. Regarding any temporal ordering, we can ask two questions:

a. What *timeframe* is deployed here? How is temporality structured? How does one moment appear in relation to another, for example, *as* before, after; beginning, continuing, rupturing, finishing; and so on? By "timeframes," I mean ways of ordering and experiencing past, present, and future. Timeframes relate events to each other in a meaningful way, for example, identifying this-or-that event as a beginning, end, intermediate step, or interruption of a trajectory (e.g., as revolution or reaction; progress or regress; new direction or continuity). Such frames can also be structured in different ways: as teleological or radically contingent; progressive or regressive; circular, linear, or dis-continuous; fatalistic or hopeful; and so on.

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[23] Herder, *Verstand Und Erfahrung*, 123.

b. What *register* does this timeframe pertain to? To whom or what does this timing belong? What does it set the rhythm or measure for? Timeframes are indexed to specific activities, things, lives, practices, institutions, or forms of life. There is no distinction between past, present, and future without something that it is a past, present, and future *of*; this is expressed by the notion of the temporal *register*.[24] For example, an academic calendar belongs to an academic community; an electoral cycle to an electoral system; and your heartbeat to your body's life process.

To clarify the difference between timeframe and temporal register, imagine that you find a new job, which, contrary to what you are used to, requires you to work night shifts on a regular basis. You have to adjust—reframe—your daily routine, reset your alarm, adjust your sleeping pattern, possibly switch around your meals. Maybe now after your shift, you go straight to bed. Not only do the beginning and end of your 'day' take place at different hours than before, they will look and feel very different. The break of dawn will no longer appear as the moment to wake up but to go to sleep. Throughout, the registers in play remain the same—your everyday routine and your career—while the timeframes (how your routine is paced and ordered; what opportunities your professional future holds) shift drastically.

The reason for speaking of timeframes rather than, say, histories or narratives is that timeframes can be explicit—when we talk about beginnings, endings, interruptions, and so on—but also embedded in what people do, as the temporal structure of practices and activities. For example, you might render some of your daily routine explicit in a narrative ("I usually get up around noon") but more pertinently it is something you perform daily in a more or less repetitive manner, even if you never weave it into a story to tell anyone.[25] Moreover, even when you do try to render it explicit, a narrative is no simple reproduction of enacted time, but at best a

[24] This is inspired, without claiming fidelity, by Koselleck's evocative notion of "layers" of time (*Zeitschichten*). Koselleck, *Sediments of Time*. But the language of layers (or "sediments") suggests, a bit too neatly, a stack of independent and self-contained sheets, folded on top of one another, instead of cross-cutting and cross-referencing each other. As Jordheim suggests, "[I]t might be more useful to imagine different temporalities existing in a plane, as parallel lines, paths, tracks, or courses, zigzagging, sometimes touching or even crossing one another, but all equally visible, tangible, and with direct consequences for our lives." Jordheim, "Multiple Times," 508.

[25] Timeframes differ in this respect from Zerubavel's otherwise similar notion of "time maps," which refers to mental representations of time. Zerubavel, *Time Maps*.

selective reconstruction.[26] A frame can also be made to structure activities by being represented explicitly (like the academic year, election cycles, a career plan, etc.).

The affirmation of "multiple temporalities" can now be interpreted as the denial that there is a master timeframe. Events occur not simply *in* time but *across* time(frames and registers). The multiplicity of time*frames* signals that any event can be interpreted in a variety of different and potentially conflicting ways. An event's significance is never exhausted by how it appears within a particular timeframe. What occurs unremarked in one timeframe could signal a world historical event in another. When two frames belong to the same register while characterizing events differently, the frames conflict. Meanwhile, the multiplicity of temporal *registers* signals that the same event may have varying significances in different frames, without necessarily conflicting. For the players, the referee's final whistle indicates the end of the game; for the kids watching TV at home, it might signal bedtime.

6.5 Timecraft

Turning now to the significance of temporality in struggles for political legitimacy, we can start by asking: Which are the pertinent registers involved? We can distinguish schematically four distinct sets of temporal registers that are salient to the encounter between subject and authority. The first three will sound familiar in light of the preceding chapters:

- *The time of rule*. Here, we find histories of the regime, from its founding or emergence, into an anticipated (un)predictable future. We should include here also the rhythms and transitions of the form and exercise of power and violence, such as transfers of power through electoral cycles or inheritance; trajectories of political reform; differential impositions of temporal burdens.[27]

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[26] Cf. Bourdieu, "The Biographical Illusion"; Strawson, "Against Narrativity."

[27] As Elizabeth Cohen writes: "From the constitutive elements of politics, such as the moment at which sovereignty commences, to true procedural minutiae, such as the period of time that police officers are instructed to wait before giving a statement after a shooting, time is bound deeply and inextricably to the exercise of power." Cohen, *The Political Value of Time*, 2.

- *The times of subjects.* In these registers, we find the manifold day-to-day activities, long-term plans, and life stories of individuals as well as groups.
- *The time of judgment.* We have already seen in the course of the preceding that the temporality of judging legitimacy can be framed in different ways (as an ongoing practice vs. an instant of decision making) and located in different registers (the perspective of subjects in a concrete encounter vs. the standpoint of any rational subject irrespective of time or place).

In effect, this simply highlights the temporal dimensions of the forms of activity discussed in the preceding chapters. The practices of portraying power and of self-constitution and self-transformation have histories and are mediated by events. But timecraft is not reducible to those forms of activity because there is a fourth set of temporal registers involved in judging legitimacy:

- *Temporal surroundings.* This refers to the manifold processes and activities taking place in the background setting in which the encounter between subject and authority occurs: economic cycles, cultural practices, natural processes, and so on.

This is obviously a very wide-ranging category: the range of rhythms that could be taken to bear on one's relation to the regime in various ways is practically infinite, and these could be framed in many ways. The encounter between subject and authority might be thought to be embedded in and synchronized with the cosmos, or it could be construed as being swept up in a progressive world history, or political relationships might be enmeshed in and overshadowed by economic power and subject to its dynamics. The most pertinent example is perhaps the natural environment. As natural rhythms of the earth's climate and ecosystems interact with and are disrupted by human cultural and economic activities, part of the difficulty in resynchronizing these clocks is that practices of governance, in turn, have their own temporal ordering, such that what appears from ecological point of view as the onset of catastrophic crisis is business as usual in economic and political terms.[28]

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[28] Michelle Bastian argues in this regard that "in the current context of multiple ecological crises, time needs to be more clearly understood, not as a quantitative measurement, but as a powerful social tool for producing, managing, and/or undermining various understandings of who or what is in

Attuning oneself to the natural world also involves rethinking one's political relationships, including one's comportment toward the regime with which one finds oneself confronted.

The general point here, though, is that politics is not an autonomous domain. To be a judging subject confronted by power is to be conditioned by and to affect a multiplicity of relationships. To relate to the regime in a particular way is also to relate in concrete but difficult to specify ways to other elements and beings in that world. One's comportment vis-à-vis the authorities can be more or less attuned to these wider relationships and more or less reflective about them. To conceive timecraft as constitutive of judging legitimacy is to construe these forms of attunement as internal rather than external to one's practical relation to the regime.

The concept of "timecraft" locates judgment precisely at the intersection of multiple timeframes and temporal registers. By timecraft, I mean to refer to the work that is involved in situating and orientating ourselves within and in relation to this plurality of temporal frames and registers in a political situation. The idea has two central features.

There are many things one can do, moves one can make, in relating practically to time and events: recollecting or forgetting past events, predicting and preparing for future ones; beginning, continuing, or cutting short a course of action; preserving or breaking with a tradition; and so on. This is the first key feature of timecraft: diverse modes of comportment come into play in orientating ourselves in time besides explicit discourse, and our actions can have a multitude of temporal effects. In going to the square to demand the fall of the regime, one already engages in a multitude of temporalized performances: clearing out one's schedule for the day (taking time off work), disrupting those of others (who find themselves stuck in even more traffic than usual), trying to bring the time of this regime to a close, enacting a new form of politics, or recuperating an old one.

The second key point about timecraft is that it is essentially polyrhythmic: it is a matter of telling stories and responding to and partaking in events not just on a singular timeline but along multiple temporal registers at once. Our protester's performance knits together temporal effects along various registers: they have cleared out their *own* schedule, letting work

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relation with other things or beings. Seen in this way, the act of 'telling the time' gains a political and ethical dimension that is absent from our usual understandings of time-keeping." Bastian, "Fatally Confused," 25.

accumulate on their desk or imposing it on their colleagues; they are joining up with *others* in collective action, coordinating their simultaneous presence in the streets; with the aim of trying to end the time *of the regime* and to constitute power anew. Timecraft is a matter of finding or forcing one's way amid, not just multiple timeframes, but multiple temporal registers at play in a situation.

Our protester configures the relations between these registers in a particular way, thereby expressing a particular sense of temporal orientation: they seem committed to the view that their personal involvement has some contribution to make to the fall of the regime, which would appear to imply that the course of history isn't fixed. If, by contrast, one takes the powers that be as an irresistible force given by the inevitable course of world history or the perennial order of things, then the timeframe that would align with that in the register of one's personal role could be to mind one's own daily business and not involve oneself in matters above one's station. So thinking about the relations among multiple temporal registers also means thinking about political change.[29]

Recent work in political theory and the philosophy of history that challenges the unilinear view of political time gives us an initial sense of the repertoire of timecrafting moves. Processes of modernization and practices of colonization can be understood as imposing a certain temporality, thus synchronizing (i.e., reframing) the various temporal registers of subjects (their lives, traditions, customs) and material surroundings (e.g., land to be cultivated, resources to be appropriated, laboring bodies) to the demands of capitalist modes of production and imperial rule.[30] Developmentalist rhetoric notwithstanding, such synchronization need not mean leveling everyone up to the same time, but could also mean keeping the subjected in a perennial situation of temporal "backwardness" to sustain relations of subordination. Conversely, the upshot of resistance movements, as well as postcolonial theories of history, is often to disrupt or *de*synchronize temporalities, disrupting the lockstep march of European modernity.[31] Michael Hanchard speaks in this regard of "time appropriation": resisting an imposed

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[29] The idea of timecraft is akin to Wallis's notion of "chronopolitics," recently espoused by Charles Mills. Wallis also highlights this link between "time-perspective" and attitudes toward action and change. Wallis, "Chronopolitics"; Mills, "The Chronopolitics of Racial Time."

[30] Helge Jordheim notes that "synchronicity is never a given, but always a product of work, of a complex set of linguistic, conceptual, and technological practices of synchronization." Jordheim, "Multiple Times," 505.

[31] Chakrabarty, *Provincializing Europe*.

timeframe, not just by proposing an alternate reading of history—because the new timeframe "is not something one can merely assume exists, and, as a result, 'naturally' flow into"—but by enacting a different timeframe in the register of one's daily life and political activities, not "to halt the march of history, but to grasp it, seize it, and transform it for one's own use, an act which previously had been denied within the old time."[32] Massimiliano Tomba recently drew attention to the political work of *anachronism* practiced by certain revolutionary insurgents: picking up and continuing political projects deemed surpassed by mainstream European modernity, building bridges across diachronic time gaps: "recombin[ing] historical times by extracting from the past futures that have been blocked and which are alternatives to the present."[33] Lastly, *prefigurative* political movements can be understood as opening up a new register by enacting here and now forms of political practice deemed as yet impossible or unfeasible.[34]

6.6 Timecraft's repertoire

Timecraft is the activity of knitting together and unraveling the manifold threads of time running through our lives, activities, practices, and institutions. What does this involve concretely, particularly in struggles for legitimacy? Let us consider some examples.

6.6.1 "It is 2013"

We initially encountered Joanna's slogan in opposition to the Dutch monarchy in Chapter 2: "Down with the monarchy, it is 2013." Even though it was exactly 200 years since William I was first offered the kingship of the Netherlands, the year 2013 holds little special significance in the Dutch context, beyond referring, at the time, to the present.[35] Still, Joanna and

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[32] Hanchard, "Afro-Modernity," 266.

[33] Tomba, *Insurgent Universality*, 14.

[34] Raekstad and Gradin, *Prefigurative Politics* (its subtitle being "Building Tomorrow Today").

[35] The Dutch monarchy is a post–French Revolution institution, founded after the end of the Napoleonic occupation that ended the Dutch Republic. In the wake of the French retreat in 1813, Dutch politicians offered kingship to William, Prince of Orange, whose ancestors had traditionally held the *stadtholdership* in the Republic, a prince-like office which was not, most of the time, officially transferred by right of inheritance. William accepted a role as sovereign but held off on the official

her companions found this observation so pertinent that they made it a hashtag ("#Hetis2013") for their protest at the inauguration of King Willem-Alexander. So what move was being made, and what relation to time displayed, by anti-monarchists stating the obvious fact that it was 2013?

In the course of a trenchant critique of the common saying that "that is no longer of this time," Marin Terpstra has sought to unpack and pick apart this anti-monarchist slogan, basically dismissing as superstition the idea that the year tells us anything pertinent to the propriety of the monarchy.[36] As Terpstra sees it, Joanna and her companions wield time as a critical yardstick. They invoke history as a transcendent normative order (*maatgevende orde*) in which the new is by default better than the old. Joanna poses as a "prophet" who purports to give univocal expression to time's linear development by proclaiming an "unconditional judgment" that the monarchy belongs here no longer.[37] Terpstra sees this reference to time as a poor substitute for genuine thinking and argument because her simple invocation of the year fails to register that modernity has no singular, unequivocal meaning and that her reading of history—like *any* timeframe—is essentially contestable. Time itself does not settle disputes as to what belongs and what does not belong. Witness the simple inversion of Joanna's claim by enthusiasts for the monarchy: "It is 2013, long live the monarchy!"

I find Terpstra's analysis of time and his critique of unilinear notions of history highly compelling, but I think a more complex and more charitable interpretation of what Joanna was doing is possible. Regarding the example through the lens of timecraft reveals two assumptions of Terpstra's critique. First, Terpstra's critique is focused at the level of narratives: the reference to time invokes an implicit interpretation of "history," which is taken for granted and functions, according to Terpstra, as a substitute for a genuine evaluation of the merits of the monarchy. Indeed, Joanna does, of course, invoke a certain narrative—a narrative to which her cardboard sign merely refers, without spelling it out, but which must be presupposed if we are to make sense of the thought that the year 2013 is relevant for the legitimacy

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title of king until 1815. After reforms, the role of the monarchy has today become almost entirely ceremonial.

[36] Terpstra, *Omstreden moderniteit* ("Contested Modernity." Available, thus far, only in Dutch.)

[37] "The slogan of the anti-monarchist demonstrator tries to cut through disagreement about 'the monarchy' with an *unconditional judgment* and as such resembles a divine judgment. The protester with her cardboard sign plays at being a prophet with a special line to '2013' or 'the time.'" Terpstra, *Omstreden moderniteit*, 42. [Translation TF.]

of the monarchy. As Joanna explained on television, she sees monarchy as a "medieval" institution that is "not of this time."[38] Still Terpstra's critique does not attend to what else might be going on besides narrating a story. What is it that Joanna is doing, in referring to the time? What form is her engagement with time taking here? And second, to what temporal register(s) should we attribute the timeframe she posits? Terpstra assumes that the reference must be to a transcendent temporal order. But must that be the case?

Start with the second assumption. Part of what makes it plausible to presume that the reference to the calendar year refers to a universal history is the apparent objectivity of chronological time. But notice that it is entirely familiar to refer to the clock or the calendar as a caesura in a wide range of activities: the parent telling the child that "it is 8 p.m.; time to go to bed"; the football coach who is ahead in overtime pointing to their watch in frustration, signaling to the referee that it's past due to finish the game. The appeal to time in these cases does not function as a criterion or a substitute for an argument yet to be spelled out, but rather as a reminder or exhortation to stick to the beat of the activity in question. Here, a particular moment in time does not obtain its significance from a transcendent normative order, but from the immanent rhythm of a practice or a daily routine, and the reference to the clock participates, by reaffirming that *this* is the beat, in carrying on that practice or routine.[39]

It is possible to read Joanna's reference to the year in the same way, which is to suggest that her claim that it is time for the monarchy to go does not refer to the inexorable tide of universal history but to a far more contingent rhythm, immanent to a much more specific register. Her performance, after all, is an attempt to repoliticize the monarchy, and with it the broader political system of which it is a part. To advocate for changing the political system, or conversely for maintaining the status quo, is to position oneself, more or less self-consciously, vis-à-vis the past struggles that shaped that political system and continue to shape it: to affirm some of their outcomes and press on in a particular direction, to try to roll them back, or to reignite what seems to have been a lost and forgotten cause. Interpreting those past struggles from a practical point of view is to retroactively identify a certain trajectory in that past; it is to take those struggles as oriented toward a certain cause,

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[38] "Pauw & Witteman."

[39] Michelle Bastian has developed an account of chronology as thoroughly conventional, arguing that we should view references to clock time as performative rather than constative statements. Bastian, "Fatally Confused."

thereby "making a past into a history."[40] Such a red thread need neither be continuous nor inevitable; what matters is that it is a cause one can identify with or against, take up and advance further or try to overturn. (This is the sense in which Jürgen Habermas, with reference to the revolutionary events of Philadelphia and Paris, invites his readers to imagine themselves as being "in the same boat" as the founders of a constitutional-democratic project.[41] It is also the sense in which *The New York Times*' "1619 Project," recollecting the arrival of the first slave ship in what would become the United States, questioned *which* boat the founders were in, and what were the relations among those aboard.[42])

From Joanna's perspective (so I am proposing), the pertinent red thread of that history is a struggle for democratization—a struggle that is still ongoing, as yet undecided, and in which Joanna sees herself as partaking; but also a struggle that has achieved certain results, like the expansions of suffrage and formal equality before the law. The monarchy can appear to be out of time, from this point of view, not simply because it is a "medieval" institution while "modernity" happens to be the historical setting in which we find ourselves, but because it does not cohere with what one takes to be achievements of the concrete democratic struggles that one wants to affirm; what Christopher Meckstroth calls a "historical baseline" of judgment.[43] Thus, for example, one might take it that the hereditary principle and the rights and duties of the monarchy are at odds with political equality, responsibility for one's own actions, and freedom to speak one's mind.

In short, Joanna's reference to the year may be operating in a different register than Terpstra presumes—not a universal history, but the contingent and situated political history of struggles that shaped the regime. This would suggest also that her reference to time is making a different kind of move than Terpstra supposes: not the prophetic pronouncement of the judgment of universal history, but an attempt to carry through the struggle for democracy according to a specific, albeit implicit, interpretation of it.

Of course, it is true that merely referencing the year simply presumes this historical baseline as given and does no work to articulate it. That surely won't convince any dedicated monarchist. But perhaps that misses the point. For

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[40] To borrow Robert Brandom's characterization of Hegel's conception of rationality. Brandom, *Tales of the Mighty Dead*, 14.

[41] Habermas, "Constitutional Democracy," 775.

[42] "The 1619 Project."

[43] Here, history figures "not as a foundation but as a source of context for interpreting the present." Meckstroth, *The Struggle for Democracy*, 27.

the aforementioned results of past struggles, while not incontestable, are part of what democracy has come to mean to many people in the present Dutch context—presumably including many of those celebrating the inauguration of the king at Dam Square. The Dutch monarchy is depoliticized and typically regarded as a marginal feature of the political system, a harmless, apolitical symbol of commonality.[44] The royal family's expenses are more controversial than its status. It is not a stretch to presume that many celebrators were there more for the *gezelligheid* (harmless fun and companionship) than as a deliberate expression of political support, let alone an endorsement of the hereditary principle. To them, Joanna would appear not as a political adversary but as a spoilsport crashing the party.[45] In that context, and in regard to such an audience, invoking the time could draw the audience's attention to the incongruity of the continued existence of the monarchy with the achievements of past democratic struggles—not by defending an interpretation of those achievements or engaging its opponents, but by jostling those who are assumed to tacitly endorse that same interpretation, even though they fail to bear that out in their actions.

In this light, an apparently simple reference to the time turns out to be a complex timecrafting performance. It is an attempt to synchronize and desynchronize timeframes along multiple registers at once: the time of the regime, the everyday lives of the celebrators, and, not least, the activities of the demonstrators themselves, for they have to somehow find the time for political action. It involves synchronizing, because getting rid of the monarchy would, on this reading of the time of rule, get rid of a temporal discrepancy within the register of the regime; but also desynchronizing because her performance interrupts (albeit minimally) the festivities of fellow citizens on their extra day off with an unwelcome reminder of the political significance of what they are doing. What appeared as a scheduled break from the everyday routines of school and work is revealed (from the perspective of the demonstrator) as an inadvertent drumming to the beat of power, and pointing that out generates a sense of dissonance that reorients its audience to the political salience of what is going on here, if it doesn't just annoy them and get ignored.

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[44] See Margry, "Mobocracy and Monarchy."

[45] Indeed, Joanna felt compelled to insist in an interview that the protest did not mean disturb anyone's "gezellige" day, thus disavowing the performative upshot I am attributing to her protest. *Interview met activiste Joanna over arrestatie.*

6.6.2 The spirit of the revolution

Merely referring to the time can only go so far. Let us turn to a critical moment in Egypt: the protests against President Mohamed Morsi on and around June 30, 2013. As is well known, Morsi was the first Egyptian president who was elected through a ballot, the outcome of which could have been otherwise, after the fall of Hosni Mubarak. His rule was contested from the beginning, and after one year, the army took massive protests as the occasion to remove him from power.

On the surface, the dispute appeared to be about how to interpret the constitution, and what criteria of legitimacy derive from it. According to a group called *Tamarod* (Rebellion), the Egyptian people were revoking Morsi's democratic mandate by means of massive protests and a petition demanding Morsi's resignation for which they gathered millions of signatures.[46] Morsi himself claimed that a democratic mandate could only be derived from official elections, and his supporters demonstrated with the slogan "No to violence and yes to legitimacy."[47] Both sides apparently agreed, then, that the constitution required a democratic mandate for the president. They treated the constitution as their common historical baseline, while disagreeing about its interpretation.

Yet the conflict was not simply about procedures of democratic legitimation. It was also about the significance of an event. Both sides appealed to the same event to justify their positions: the "Revolution" of 2011, which had brought down Mubarak. Critics claimed that Morsi had violated the spirit of the revolution by appropriating new powers. As Mohammed El-Baradei tweeted: "Morsi today usurped all state powers and appointed himself Egypt's new pharaoh."[48] On this rendering of the course of events, there had been, after Morsi's election, a second regime change: Morsi had ruptured the time of rule, breaching the continuity between the regime's founding (in the 2011 Revolution) and the present and recuperating an ancient form of tyranny. Meanwhile, Morsi cast his own "constitutional legitimacy" as the "great achievement" of that same revolution.[49] In his view, strengthening the position of the president was essential to preserving and carrying through that

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[46] "Profile: Egypt's Tamarod Protest Movement"; Badr, Tamarod: The Organization of a Rebellion.
[47] "President Morsi's Post-Coup Speech"; El-Dabh, "June 30: Tamarod and Its Opponents."
[48] Spencer and Samaan, "Morsi Grants Himself Sweeping New Powers."
[49] "President Morsi's Post-Coup Speech."

revolution, which had cut off the head of the preceding regime but left intact many of its claws and tentacles (particularly in the army and judiciary).

We see, then, clashing timeframes for the register of rule. Both sides anchor their timeframe in the same event and seek to make that event into a beginning, either by maintaining continuity or repairing discontinuity with the present (within the register of rule). They did so not only by telling competing stories (about the continuity and rupture of the regime) but also by timing their own activities (taking to the streets to reset or sustain the time of rule) and calling on others to synchronize their actions to the same timeframe (persuading the president to step down; persuading the army to abide by the constitution).

However, this overt dispute over the meaning and implications of the revolution occludes a deeper temporal fissure than appears at the surface: for was there truly a revolution, a beginning that could be restored or carried through, in the first place? A sly remark in the documentary *The Square* hints in this direction. An army officer, Major Haytham, alludes to the army's hand in the 2011 uprising and the fall of Mubarak: "We didn't protect the revolution, we made it happen. You kids don't know anything."[50] The implication would appear to be that, constitutional changes and replacements of figureheads notwithstanding, the army was in control all along. What this suggests is that the existence of the common historical baseline cannot be taken for granted, but is the work of timecraft. For had Morsi managed to hold onto power, or had the army's coup been followed by a genuine turn to electoral democracy, then Mubarak's fall would have been retroactively made into a new beginning, irrespective of who actually did what behind the scenes in 2011. As it happened, though, in view of Egypt's "slide into the hands of soldiers,"[51] the 2011 events seem more like a return of the same than a new beginning.

However, to simply say that "nothing changed" in the end would be to overlook that events play out differently in different registers. For the spirit of the revolution was not contained within the register of rule, with its constitutions, heads of state, and governing institutions. Arguably, that was not even its primary locus. The attempt to rupture the time of rule also involves, in the manifold registers of participating subjects, a break in their everyday lives, while the lives of others who keep themselves out of political

[50] Noujaim, *The Square.*
[51] Kirkpatrick, *Into the Hands of the Soldiers.*

affairs go on much the same. The protesters had to adjust their everyday routines, and perhaps their life plans, to partake in the demonstrations and street battles. For people like the man with the sign "I used to be afraid, now I am Egyptian" (whom we met in Chapter 5), joining others in action gave birth to a new sense of political identity. For many, it brought a tragic end to their lives.

Yet the Tahrir Square participants did not just frame and reframe existing registers—they also opened a new one. Distinguishing a multiplicity of temporal registers (in addition to timeframes) enables us to conceptualize the intertwinement of continuity and change in revolutionary moments. It allows us to conceive of radical novelty—a qualitative distinction between transforming something and beginning something new[52]—while recognizing that every rupture (in one register) is also a continuation (in many others). For many activists, the spirit of the revolution was not embodied at all in the new constitution and the elections that resulted eventually, but rather in the actions, organization, and decision-making practices that emerged seemingly spontaneously in what they called the "Republic of Tahrir," where they prefigured (in the midst of bloody confrontations with the regime's agents) a different form of politics—not so much a reframing of the register of rule as the opening up of a new register of egalitarian, participatory action.[53] To be sure, that opening was fleeting, sustained on the square only for the duration of the protests. Yet solid as the army's grip seems today, one cannot exclude that the alternative futures prefigured at Tahrir Square might once be picked up again and carried forward. From a practical point of view, what happened on the square continues to hang in the balance.[54]

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[52] Cf. Wenman, *Agonistic Democracy*.

[53] Mathijs van de Sande compellingly exhibits this prefigurative dimension of the protests, arguing: "Tahrir Square will be remembered as a space of freedom where equality and democracy was lived; not just as the headquarters of a political movement, but as a sort of social laboratory in which a new political community began to take shape." van de Sande, "The Prefigurative Politics of Tahrir Square," 236. For a similar account with more focus on the spatial dimensions, see Gunning and Baron, *Why Occupy a Square?*, 310.

[54] "The meaning of what takes place now is shot through with ambiguity, for its significance can only be established retrospectively, and only for the time being. . . . What seemed to be at the time the continuation of order by constituted power becomes, with the benefit of hindsight, a veritable foundational moment, but one that escaped its protagonists in that now. On the other hand, what now seems to be a revolutionary moment, galvanizing participants to great achievements and sacrifices, retrospectively can appear to be no more than a revolution in the sense of a return to the same; the genuinely revolutionary moment escaped its protagonists when they thought they had it in their hands." Lindahl, "Possibility, Actuality, Rupture," 171.

6.7 Judging well

I close this chapter by reflecting, in an exploratory manner, on this question: What constitutes *good* judgment, in relation to a regime? Again, our aim is not to adjudicate struggles for legitimacy by identifying which judgment is correct, but to grasp what is involved in judging well in conditions of uncertainty and disagreement. To say that judging legitimacy consists partly in timecraft implies that the quality of our stance taking toward the regime is also a matter of the ways in which we experience, interpret, respond to, and partake in events. What is it for that to go well or poorly?

6.7.1 Responsiveness

I begin by picking up a thread from Terpstra's critique of Joanna, which turned on a perceived failure or refusal on her part to acknowledge the contestability of her sense of the time. Whether or not the criticism applies in that particular case (I suggested that a different reading is at least possible), the underlying idea is important: judgment is compromised if one acts as if one's own reading of history were self-evident and a measure for everyone else's, as if time were unilinear and one had privileged access to it. This would be to manifest a blindness to the questionability of one's own judging, or, in Wittgensteinean terms, to be held captive by a picture, unable to see it as a particular timeframe, for a particular register. Any timeframe is contestable, and it is problematic to present one's own reading of history as a self-evident master timeframe. In the terms of the preceding chapters, this would be a lack of responsiveness to the conditions of one's own judging; a failure to acknowledge the inherent questionability of "when" we are and "what is happening here."

Terpstra's recommended mode of acknowledging this contestability, in effect, suspends judgment:

> Let us replace the judgment of time with the consideration (*beschouwing*) of the struggle. Only thus—and not by staging oneself in a tragic or heroic history—can one bring into view the world in which one thinks and acts.[55]

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[55] Terpstra, *Omstreden moderniteit*, 197. [Translation TF.]

This remark appears to suggest that engaging in timecraft is optional. But this historical staging is not something one does by oneself and could choose to step back from. Even if you were to abstain from telling your own stories, you would still find yourself ensnared in the timeframes imposed by the powers that be. You inevitably comport yourself toward the regime, and the timecraft it performs, in one manner or another. Judgment is ineluctable. So instead of acknowledging contestability at an abstract level, I think responsiveness to the conditions of one's own judging is manifested in one's practical comportment, in opening up and maintaining rather than closing space for the questions of when we are and what is happening. And opening such room is quite literally what Joanna and her companions were doing by politicizing a festive celebration on Dam Square.

6.7.2 *Kairos* and *virtù*

Recall that judgment in the present progressive stands in a twofold practical relation to time: as both responding to and partaking in events. Here, we encounter again a tension between receptivity and spontaneity; between, in this case, the call to do justice to events as they present themselves—to account for what is really happening—and the virtuosity of shaping them creatively—making things happen.

The apparent contradiction can be helpfully staged by casting, following Melissa Lane, the ancient Greek notion of *kairos* and the Machiavellian notion of *virtù* as contrasting ways of conceiving what makes for good judgment in connection to time. The word *kairos* designates both a concept of time in general (a qualitative succession of moments of varying meaning and significance, in contrast to the purely quantitative, measurable *chronos* time[56]) and a quality of judgment and action: a sense of "good timing." In the latter sense, which concerns us here, *kairos* signifies the ability to discern the "the correct and fitting moment for word or deed."[57] This is a matter of recognizing the objective circumstances in which one finds oneself at this particular moment, grasping events as they present themselves, appreciating them for what they are and for the possibilities they afford. *Kairos*, as Lane

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[56] Smith, "Time, Times, and the 'Right Time': Chronos and Kairos."
[57] Lane, "Political Theory and Time," 238.

presents it, involves rendering a truthful, objectively correct account of the specificity of this moment within the flow of time.[58]

Virtù, by contrast, presumes that we cannot know the objectively right time for action. Any cognitive grasp of particulars is at best partial and fallible. For Machiavelli (again following Lane's exposition), what sets apart those who display this excellence, peculiar to effective statesmen, is a certain mastery of possibility that is not fully explicable. The meaning of events and the possibilities they afford are not simply given but malleable. The virtuoso does not simply accept circumstances as they present themselves and respond fittingly but crafts the circumstances to fit their intended actions or goals. "If the *kairos* matched action to moment by claiming to discern an objective fit, *virtù* was rather the quality of wrenching the moment to favour one's action."[59] So conceived, it requires not so much a truthful account of events as one that is efficacious—being in the grip of a powerful myth could be more effective than a cognitive grasp of what is actually happening.

Thus stated, the two appear as contrasting ways of conceiving what makes for good judgment in relation to time: finding a fitting action for a given timeframe (e.g., whether the time is ripe for revolution) versus molding the timeframe for a given action (the revolution is made, not found).[60] But this appears contradictory only if we assume that judgment signifies a singular moment of decision in relation to a unilinear time.

I propose to reinterpret *kairos* and *virtù*, with the help of the concept of timecraft, as complementary virtues of judgment, without fully resolving the tension between them. The first move is simply to situate such a moment of decision in an ongoing course of action (thus reframing judgment by extending its temporal register). We can then recognize that *virtù* relies on *kairos*. After all, crafting the circumstances in which one is to act is itself a form of acting, and one would presumably have to know—or, if not *know*, then somehow glean or guess or appreciate—when the iron is hot and how

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[58] Mathias Thaler appropriates the notion of *kairos* for contemporary political philosophy in a somewhat different manner, contrasting *kairos* to *chronos* as distinct but complementary conceptions of political time. Thaler, "On Time in Just War Theory."

[59] Lane, "Political Theory and Time," 238, 239. The contrast here is stylized because (as Lane has pointed out in conversation) Machiavelli's conception of *virtù* may have been closer to *kairos*: as Joanne Paul explains it, *virtù* requires (also) the skill of discerning the opportune moment for action (*occasione*), which, according to Paul, is equivalent to *kairos*. Even so, Lane maintains that there remains a contrast because for the Greeks an objective order of the good constitutes the reference point for timeliness, where for Machiavelli the reference point is provided by the goals of the agent. Paul, "The Use of Kairos in Renaissance Political Philosophy," 59–60.

[60] For an astute diagnosis of this tension, in a different vocabulary, see Thaler, "Political Judgment beyond Paralysis and Heroism."

far to bend it to one's advantage before it breaks. Likewise, *kairos* presupposes *virtù*. If we situate the kairotic choice in a longer course of judgmental activity, then the circumstances we happen to find ourselves in and the range of possible actions we can now take no longer appear as given, but as conditioned partly by our prior choices and actions. In other words, what got us into this situation in the first place was, in part, *virtù*, or the lack of it (and *fortuna*, of course).

The next move then is to pluralize the temporal registers at play. Timecraft does not refer to a singular moment of decision in relation to a unilinear time, but to an ongoing activity, with its own temporal register, which intersects with and works on a multiplicity of registers in a situation. Timecraft deploys timeframes in order to get a precarious practical and conceptual grip on the distinct rhythms of these various temporal registers and the synergies and discordances between them, and these frames take the form both of explicit justifications or narrations or cognitions (like *kairos*) and of practical interventions (like *virtù*). If there is no master frame, and no timeframe is simply given and held fixed such that any other must be made to lockstep with it, then *virtù* can appear as the flip side of *kairos* in a process of mutual adjustment or attunement of frames in multiple registers.

In other words, we can reinterpret the "fit" that *kairos* and *virtù* aim at from their respective angles—the more-than-fortuitous match of moment and action—as a relation between multiple temporalities, a felicitous synchronicity of timeframes in multiple temporal registers. If *kairos* means to time one's own activities in accord with the beats set by 'circumstance,' that is, with the framings enacted in the wider constellation of other temporal registers at play in the situation—the time of rule, of other subjects, and of the world widely construed—then *virtù* means, conversely, for one's actions to ripple and resonate across registers not immediately one's own, reshaping the circumstances in which one acts.

My proposal, then, is that manifesting *kairos*—the ability to recognize the "right time" for something—involves making sense of the multiplicity of timeframes and registers operative in a situation, where 'making sense' means rendering them explicit, tracing their inferential connections, and signaling material incompatibilities, as well as timing one's own activities in light of that. One's comportment manifests this virtue insofar as it contributes to articulating coherent accounts of the possible significances that an event may have from various perspectives and in different registers. In the case of the dispute about the Dutch monarchy, for example, this would involve

interpreting the political system and the historical struggles that gave rise to it, and to comparatively assess alternative readings, explaining whether and why "down with the monarchy" makes more sense than "long live the monarchy" in view of this history, and whether the monarchy should still be seen as a relevant locus of power at all.[61] In contrast to the normativist picture of judgment as norm application with which we started, all this work of articulation is here thought of as an ongoing activity that is integral to judging legitimacy rather than prior to it.

Virtù, meanwhile, involves synchronizing one's own activities and life plans with the stories thus synthesized; not merely recognizing the urgency of action (or lack thereof, as it may be), but planning and acting in accord with it, and letting those actions play out along multiple registers—for example, joining the celebrations, protesting, mobilizing others, or abstaining from active involvement (depending on the content of those interpretations).

The case of Joanna is ambivalent on this score. On the one hand, thus far, at least, the monarchy seems not to have budged, and the anti-monarchist cause has gained little resonance. Yet, having achieved short-lived fame and airtime on national television (with the help of the police, who arrested her twice on spurious grounds), she called attention not only to the economic power of the monarchy but also to other issues of police repression and the status and treatment of illegal immigrants. So while this timecrafting performance did not effect change in the register of rule, perhaps it did resonate in other registers, and contribute to shaping conditions for wider political engagement.

A more tragic illustration of an act that reverberates across times is, once again, the self-immolation of Mohamed Bouazizi. Here, too, multiple registers intersect: in virtue of how it was taken up by the other protagonists of the Arab Spring, the end of Bouazizi's life also became a rupture in the time of rule, as well as the opening of a new register of political activity. That Bouazizi chose to die rather than go on drumming the beat of power indicates that he saw little hope of achieving meaningful change within his lifetime. Nonetheless, his refusal, carried through as a beginning by so many others, effected an "interruption of the dominant temporality of the existing order"[62] and generated "now out of never" (to borrow a felicitous phrase[63])

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[61] Cf. Meckstroth, *The Struggle for Democracy*.
[62] Bargu, "Why Did Bouazizi Burn Himself?," 29.
[63] Kuran, "Now out of Never," after a poem by Bertolt Brecht (p. 13, note 22).

by opening up avenues for political activity where none had seemed to exist before.

6.8 Conclusion

I have argued that normativism, be it of a universalist or contextualist bent, treats judgment as if out of time and place, and thereby as incapable of practically responding to events. Receptivity to history is outsourced to empirical description and normative justification, which are rendered prior to judgment, while the spontaneity of action is cast as posterior to it. The view I proposed instead regards judging legitimacy as a temporally extended activity that involves responding to and partaking in events. Taking a stance toward the regime is also a matter of comporting oneself vis-à-vis the wider material-historical setting in which one finds oneself. To flesh out what this involves, I introduced the notion of timecraft, with its unruly, polyrhythmic multiplicity of temporal registers and modes of comportment. Finally, I offered the beginning of an account of good judgment in relation to the regime and with regard to time by suggesting that judging well involves combining receptivity and spontaneity in relation to events in the form of *kairos* and *virtù* while manifesting responsiveness to the conditions of one's own judging.

If this account makes sense, it yields a further argument that the concrete encounter of subject and authority matters. Judging legitimacy from a practical standpoint is a fundamentally different activity than taking an observer's point of view. Arendt appears to suggest at some point that a determinate, definitive answer to the question "What happened?" is possible, but only from the third-person standpoint of an external, temporally distant observer:

> [T]he light that illuminates processes of action . . . appears only at their end, frequently when all the participants are dead. Action reveals itself fully only to the storyteller, that is, to the backward glance of the historian, who indeed always knows better what it was all about than the participants.[64]

Indeed, in the cases we considered, it seems easier to draw the lines of continuity and rupture in retrospect, from the disengaged standpoint of an

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[64] Arendt, *The Human Condition*, 192.

observer. It would be all too easy to say that Germany did make a fresh start after the Second World War, and that the revolution failed and Egypt remains a military dictatorship. Yet the objectivating historian stands in a fundamentally different relationship to the situation than a participant. They have the benefit of hindsight but cannot change what happened. Their past-perfect take on the situation is possible precisely insofar as it lacks practical involvement with the regime and those subjected. Insofar as their "judgment" has any practical significance, it does so in an entirely different context. From a practical standpoint, the significance of a past event as a revolution is not an objective deliverance of history, given to judgment, but a work of timecraft that continues to hang in the balance. To think about judgment as timecraft is to conceive judgment in the present progressive, and this means that paths which appear closed can, in principle, be opened up again. Political time remains inherently unsettled and unruly.

Conclusion

Unruly praxis

When your friends call on you to take to the streets and demand the fall of the regime, and you wonder how to respond, this makes explicit a question that we all address, albeit often implicitly, in our everyday lives: How shall we relate practically to the forms of power with which we find ourselves confronted? Grappling with this predicament over half a century ago, Hanna Pitkin suggested that it is perhaps too much to expect a theory to solve this question. But if a theory cannot tell someone "what to do in particular cases," perhaps it can "tell [them] what sorts of considerations are relevant to [their] decision, direct [their] attention and tell [them] where to look." And her proposal for the appropriate place to look was the "nature of the government—its characteristics, structure, activities, functioning"; in other words, one should ask what form of regime it is. Pitkin admits this is "not much of a guide," but when compared to consent theory, which directs one to look at one's own past deeds ("have I (we) consented to this?"), "it is a beginning much more usefully related to what [people] need to think about when they make such choices."[1] Following Pitkin's lead, my ambition in this book has been to develop a philosophical framework for grasping the question of legitimacy as it presents itself in practice, with the aim of providing orientation rather than resolution. Part of its upshot has been to vindicate Pitkin's view that what is at stake is what power is like (here and now), but it has also broadened our field of vision to include relations to one's surroundings, to others, and, after all, to oneself as well.

One way to summarize the picture that has emerged is to say that judging legitimacy is an *unruly praxis*. *Praxis*, because judging is doing something, comporting oneself practically in several dimensions of political reality, partaking in practices of contestation. The pertinent forms of activity were

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[1] Pitkin, "Obligation and Consent—II," 40. For a discussion of Pitkin's frequently misunderstood essay, see Fossen, "The Grammar of Political Obligation."

parsed, in Part II, along three dimensions. In judging legitimacy, a subject relates practically to a regime, to themselves, and to their historical and material surroundings. And in each dimension, judging is something one does with (and against) others. This is a further way in which this analysis expands on Pitkin's: in grasping what the regime is like, more is involved than the receptivity of perception. There is also a certain spontaneity to portraying power: in taking the regime *as*, say, a police state or a parliamentary democracy, one partakes, in a consonant or disruptive manner, in the practice through which the regime is constituted and characterized as what it is. In the other dimensions, likewise, judgment is co-constitutive of its subject and its surroundings.

In effect, this analysis implies that it is somewhat misleading to speak of a single "question of legitimacy." The question of legitimacy is a shorthand for a set of irreducible but interrelated questions that arise from a practical point of view. What forms does power take, in this context? Who am I; who are we? Where and when are we; and what is happening here? These issues are not preliminary but constitute the heart of the predicament: to engage with these questions *is* to engage with the question of political legitimacy. Only by treating these aspects as integral to judging legitimacy, rather than prior to it, can we do justice to the circumstances of disagreement and uncertainty in which the question of legitimacy arises, and the concrete dilemmas and risks to which it exposes us—or so I have proposed in Part II.

The resulting account of political legitimacy can be considered, in a sense, deflationary. We need not postulate, *beyond* these questions, a further thing, a 'property' of legitimacy to be concerned with. (Or, if such a property exists, its presence or absence has little to do with the practical predicament subjects face when confronted by power.) There are in any situation, from a practical standpoint, manifold reasons for taking-and-treating a regime as legitimate, but we do not have to appeal to something that "makes" authorities legitimate; no mysterious "source" of legitimacy needs to be located. In this sense, struggles *for* legitimacy are not *about* legitimacy; rather, they are about who we are, what the regime is like, what happened and is happening here. The stance one takes is a resultant of one's comportments along these dimensions, which may be expressed with an explicit claim that the regime is legitimate or illegitimate. The distinction between legitimacy and illegitimacy expresses the caesura where a disagreement on one or more of these issues becomes a rupture, and this line is drawn differently from different points of view.

One might object that surely a struggle for legitimacy is about more than just how to describe the situation: it is a struggle over rights and duties, the "right to rule" of the authorities and the duties of subjects (to comply, refrain from resisting, etc.). It seems, so the objection goes, that the notion of normative entitlement drops out of the analysis. And this also would be inconsistent with the way Chapter 2 conceptualized political legitimacy, namely as a complex and hybrid normative status: a pattern of commitments and entitlements attributed across multiple perspectives (subject, authority, and other subjects). But this objection misses the crucial point. The commitments and entitlements of authorities and of subjects are always theirs *qua* the kinds of authorities (e.g., "state"; "lawful government"; "gang of thugs") and subjects ("citizens"; "human beings"; etc.) that they are (and are not). These terms, when deployed in practical contexts, are not neutral; they are loaded with normative baggage, and what that baggage is exactly is assessed differently in different situations and addressed through ongoing contestation. The rights and duties of citizenship (or statehood) are constitutive of what it means to be a citizen (or state); and the meaning of these terms cannot be settled from an independent standpoint but is precisely what is practically at issue in a struggle for legitimacy. There is no realm of mere description or of pure normativity when it comes to the question of legitimacy.

What I mean by calling the praxis of judging a regime fundamentally 'unruly' is that a struggle for legitimacy is a situation of normative disorder. In contrast to pub quizzes, tennis matches, and court battles, as well as, ordinarily, policy disputes and election outcomes, no one is in a position to authoritatively settle this question, since "what happens at times of resistance or revolution is precisely that these normal official interpreters are themselves called into question."[2] Nor is there a common rulebook that all of the parties can be taken to acknowledge as authoritative, even in the absence of a third-party umpire. What might, in other contexts, serve as grounds for sorting out disputes—an implicit commitment to the rules, to a procedure, or a third-person umpire—is inherently questionable in a struggle for legitimacy. The meaning of citizenship and the political salience of being human are potentially on the line, in the way that one's status as a player, let alone human being, is not while playing tennis or in court (in most cases). It is precisely when such fundamental issues are called into question that an

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[2] Pitkin, "Obligation and Consent—II, 51.

ordinary political dispute becomes an overt struggle over the legitimacy of the political order.

This does not mean that there is incessant conflict and disagreement along each of these dimensions. Nor does it mean that such disputes cannot *de facto* be settled, provisionally, by appealing to or constructing a shared understanding of the nature of the regime, who we are, when we are. Rather, it means that insofar as there is common ground, that is not a given but a consequence of converging judgment, which always remains provisional. From a practical point of view, there is inherently a tension between something's being legitimate and it merely being taken as legitimate, and this is true both vis-à-vis what is 'generally accepted' by the community, and vis-à-vis one's own subjectively acknowledged commitments (as observed in Chapter 2). This cashes out, more concretely, as a tension between how the authorities portray themselves (or how others portray them) and how they are properly portrayed; who you truly are, and who you are taken to be (by the regime, others, yourself); what is happening and what one takes to be happening. There is no privileged point of view from which these tensions can be resolved. To be clear, unruliness consists not in the *absence* of criteria. There are in a concrete situation many reasons for portraying the regime as, say, a parliamentary democracy rather than a police state, or the other way around, or for saying that neither of these alternatives is apt. It is just that what counts as a good reason here is not simply given but itself part of what is at issue. The pertinent criteria are themselves at stake in the very dispute they are meant to address.

The sense of unruliness I have in mind here is deeply political, and goes beyond the inherent contestability and provisionality that afflict any meaningful claim, according to Brandom's pragmatism (discussed in Chapter 2). If you recall, Brandom describes the practice of evaluating the truth of factual claims as a "messy retail business of assessing the comparative authority of competing evidential and inferential claims."[3] But this "messy retail business" is already too tidy, too 'ruly,' to describe the predicament we have been concerned with here. Note, first of all, that the claims at issue for us are not just factual (although they certainly have factual aspects) but also profoundly practical, existential even: the very being of what is being talked about (selves, authorities, and events) is sustained (or subverted) through the scorekeeping practice itself, and is therefore fragile in a way that many ordinary facts

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[3] Brandom, *Making It Explicit*, 601.

are not. Moreover, the free-market claims economy of Brandom's deontic scorekeeping model is built on the assumption that all parties are symmetrically authoritative scorekeepers, each entitled to maintain their own sets of books tracking who should buy which claims at what inferential price, continuously comparing their own perspective to that of others. The reciprocal roles of buyer and seller appear as simply given, and the normative order required for their exchanges to operate smoothly, assuring that disputes are settled by "giving and asking for reasons," is presupposed but does not come into view.[4] In contrast, at issue here are not just the credentials of first-order claims and criteria by which to assess them, but also and at the same time the status of the claims makers and the very existence of the objects the claims are *about*: collective selfhood and political authority. Here, nothing guarantees that the parties recognize one another as interlocutors, refrain from imposing their claims on others, or have more or less equal resources at their disposal. On the contrary, taking a stance often involves staging, mobilization, and strife by other means than exchanging arguments, in conditions of sometimes radical inequality, as witnessed dramatically by the weaponization of the body to which Mohamed Bouazizi had to resort to be heard as making a legitimacy claim at all.[5] This has been the refrain of Part II: the political world is not simply given to judgment but at stake in it; the space of reasons is politically constructed; and the game of giving and asking for reasons is also a struggle to be seen and heard in the first place.

This unruliness explains why the question of legitimacy can only be engaged from a practical standpoint, and resists the theoretical resolution normativist theorists typically seek to provide. Simply pronouncing from an observer's standpoint that this or that regime is "'legitimate" or "illegitimate," whether *in mente* or out loud, does not amount to "judgment" in the full sense at issue here. Expressing one's opinion in this manner simply doesn't involve the kind of commitment that is involved in existential strife. As a consequence, it matters profoundly whether the regime you are judging is one you actually find yourself confronted with.

Does that mean it makes no sense at all to speak of the "legitimacy" of a regime from an external point of view? Of course, you can *say* of any regime, whether actual, historical, or imaginary, that it is legitimate or illegitimate.

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[4] This characterization is fair when it comes to Brandom's exposition of the deontic scorekeeping account of meaning in *Making It Explicit*, but the later Brandom has a much more elaborate Hegelian story to tell about the emergence of order and the constitution of scorekeeping selves.

[5] Bargu, "Why Did Bouazizi Burn Himself?"

But what does it mean to say this, and what does one do in saying it? I have proposed that claiming that a regime is legitimate from a practical point of view is expressing one's political stance toward the regime, which is at the same time to partake in practices of portraying power, self-transformation, and timecraft. Speaking of the legitimacy of an imaginary or historical regime just cannot have the same practical significance. Still, that is not to deny that when "judging" from afar, you are doing *something*. You might engage a distant regime as a third party, for example through diplomatic or economic relations. Even if the case is purely hypothetical, you might still clarify or display your beliefs by considering what stance it *would* be appropriate to take, in your view (like a spectator on the couch blowing a whistle while watching a game, playing at being referee). In any case, though, these distant observers are in a structurally different type of position vis-à-vis the authorities in question, and hence engaging in a qualitatively different form of practice. And since you are doing something quite different in deploying the term "legitimacy" here, you are, in effect, deploying a different concept.

That philosophical theories often remain oblivious to the differences of meaning and perspective involved here may perhaps be attributed to a phenomenon Mark Wilson calls "wandering significance."[6] Words change meaning in subtle and often unnoticed ways when used from one situation to the next, and this is so especially when the shift is from one type of setting to another—not least, the shift from a political to a scholarly context. A practical concept becomes an analytical tool when deployed from a third-personal point of view. Witness Weber's postulation (discussed in Chapter 1) that "legitimacy" is to be treated, *from a sociological standpoint*, as "the probability that to a relevant degree the appropriate attitudes will exist, and the corresponding practical conduct ensue."[7] It was quickly forgotten (though not by Weber) that this technical regimentation of language was intended for specific descriptive and explanatory purposes, recurrent reminders from reflective social scientists and philosophers notwithstanding. The postulated meaning became standard use for many trained in the social sciences, no longer carefully distinguished from what the word ordinarily meant, eventually spilling back into everyday public discourse. In philosophy, meanwhile, significance wandered in the opposite direction, reifying rather than forgetting the practical significance of the term. As, with the emergence of the

6 Wilson, *Wandering Significance*.
7 Weber, *Economy and Society*, 1:214.

social sciences, philosophy became an academic discipline with increasingly narrow remit, it posited, as a counterpoint to the sociological standpoint, a "normative standpoint"—a singular point of view, seemingly out of time and place. Here, "legitimacy" becomes an abstract moral property, its necessary and sufficient conditions identifiable purely by moral argument, regardless of an index to specific struggles, situations, subjects, power constellations, and events. Only by taking this standpoint for granted can we assure ourselves that, as Arthur Applbaum recently put it, "[W]e always have a place to stand from which to make these judgments about legitimacy."[8]

The assumption behind this is that morality provides ruliness, that we always already share a moral standpoint (even if not the same moral views), so that it is just a matter of justifying the right standards to adjudicate which stance is "correct." But morality is itself deeply contested territory, both as to its nature and its content, and these issues are profoundly bound up with who we take ourselves to be. The political salience of being human, a rational agent, a rights-bearer, a utility-maximizer, a social animal, and so on is itself at stake in the question of legitimacy, not solid ground for its resolution. That observation, of course, does not entail that there exists no objectively correct answer. It does mean that the question of legitimacy cuts so deep into the fabric of political reality that any attempt to adjudicate the dispute is, in fact, engaging in it—and a theory of legitimacy needs to be reflexive on this score. This book has sought to recalibrate our concepts, not in an attempt to recover a pure original meaning, but in order to reorient our theorizing toward political practice and to offer a more reflexive account of how our concepts relate to that practice.

From criteria of legitimacy to conditions of good judgment

But if judgment is unruly, that does not make it arbitrary or merely subjective. Nor does it entail that political theorizing cannot meaningfully contribute. The view developed in this book opens three avenues for thinking further about how theorizing can contribute to helping judgment go well. First, of course, it is always possible to engage critically in the practices I have tried to explicate: to scrutinize constellations of power, self-understandings,

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[8] Applbaum, *Legitimacy*, 247.

and events in concrete situations. And this is what many political theorists already do (and have historically done). I am not thinking primarily of those who explicitly occupy themselves with developing theories of political legitimacy, but of those whose theoretical work aims to get a conceptual grip on the workings of power, the constitution and characterization of selfhood, and the meaning of events in concrete settings. A good example is the work of Achille Mbembe on the forms of power and subjectivity in postcolonial Africa. Mbembe examines both the farcical nature of regimes and the ways in which people can cope with the farcical nature of their regimes.[9] Michel Foucault is another prominent example, despite his thorough lack of interest in the question "What legitimates power?" He sees the question of legitimacy as a form of political thinking "based on legal models"—not something he regards as a compliment.[10] This characterization is apt as far as normativism goes. But it would be a mistake to dismiss the problem because one does not agree with the predominant framing of it. Indeed, also for Foucault, there remains a practical predicament of how to relate to the forms of power with which one finds oneself confronted. Much of his work attempts to render visible historically contingent relations of power and their role in shaping forms of subjectivity. So grasping the problem in the way I am proposing casts Foucault, like Mbembe, as a theorist of legitimacy par excellence, his animadversions to the contrary notwithstanding.

What Foucault was not prone to do was to engage in these activities by articulating principles or criteria, but that, too, can be part of the story. Without necessarily regarding a theory as in essence a codification project, and without reducing judgment to the application of such principles, one can partake in the game of giving and asking for reasons in these various dimensions. Thus, one might try to systematically spell out and critically assess what one commits oneself to in calling something "democratic" or "undemocratic," and whether for example, abolishing the monarchy would enhance a regime's democratic credentials or not. Christopher Meckstroth's approach to democratic judgment enables us to do just that.[11] Rather than proposing a set of criteria for what makes a regime democratic, Meckstroth develops a nonfoundationalist method for comparatively assessing proposals for democratic reform. Judging here consists not in the application

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[9] Mbembe, *On the Postcolony*.
[10] Foucault, "The Subject and Power," 778.
[11] Meckstroth, *The Struggle for Democracy*.

of principles but in drawing out in detail and comparatively evaluating the inferential implications of competing positions in a particular political struggle.

The second direction for philosophical enquiry to which the account offered here orients us is simply to push much further the lines of enquiry undertaken in an exploratory fashion in Part II, which is to say: to articulate and examine the forms of activity that constitute judgment, and explicate what makes for good judgment. This calls for much more fine-grained analysis and argumentation than I have been able to provide here. Perhaps the range of activities constitutive of judgment could be expanded, for example, by considering place making as a distinct dimension of judgment; and perhaps different qualities of good judgment can be identified than those I have sketched.

From this perspective—and this will be my final point—what makes judging legitimacy such a challenge is not so much our lack of a certain form of philosophical knowledge, but rather the stubborn character of political reality and the precariousness of our grip on that reality. This raises the fundamental question, which I have barely touched on here, of the conditions of judgment: What circumstances and conditions enable or subvert our ability to judge well? It is hard to overstate the difficulty of getting a grasp of relations of power one finds oneself in. "When you have no rights, when you're taken for granted, when you're lied to, when you're killed, things become pretty clear," says Khalid Abdalla, one of the activists portrayed in *The Square*.[12] But subjective experience is one thing, attributing responsibility and manifesting one's judgment in the world is something else. And if judging legitimacy is something one does with others, then the difficulty, poignantly documented in the film, is also to share that sense of clarity with and communicate one's sense of what is going on to others with different points of view, interests, and attention spans. Another Tahrir Square activist, Magdy Ashour, testifies to this difficulty when he remarks: "There is a fog in the country." He is not, I think, referring to the teargas in the streets, but to the smokescreens that are pulled up around people's experiences and intentions. Distrust, division, and disinformation prevent the same things and events from coming into view from multiple perspectives, and those perspectives from meeting—especially where a regime's survival is at issue. But also where a regime is generally accepted and appears to run smoothly, there may be little room

[12] Noujaim, *The Square*.

for questions to be asked, evidence to be considered, inferences to be spelled out and critically assessed, contestations to be staged. The "space of appearance" (as Hannah Arendt called it), where people appear to each other as having distinct perspectives, as capable of words and deeds, and mutually calling for response, is precarious. Judgment is ineluctable; one inevitably relates to the powers that be in one way or another. But the quality of judging may be highly compromised. The uncanny implication is that there may be conditions, possibly very widespread ones, in which it is not even possible to judge well. That would mean that the workings of power remain opaque and elusive, our selves fragmented and fractured, and our political relationships out of tune with the wider world around us. And if judging is indeed an unruly activity, then this is a predicament one cannot simply contemplate oneself out of.

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