

# Political Legitimacy as an Existential Predicament

Political Theory

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## Abstract

This essay contributes to developing a new approach to political legitimacy by asking what is involved in judging the legitimacy of a regime from a practical point of view. It is focused on one aspect of this question: the role of identity in such judgment. I examine three ways of understanding the significance of identity for political legitimacy: the foundational, associative, and agonistic picture. Neither view, I claim, persuasively captures the dilemmas of judgment in the face of disagreement and uncertainty about who “I” am and who “we” are. I then propose a composite, pragmatic picture. This view casts the question of political legitimacy as an existential predicament: it is fundamentally a question about who you are—both as a person and as a member of collectives. The pragmatic picture integrates rational, prudential, and ethical qualities of good judgment that were heretofore associated with mutually exclusive ways of theorizing legitimacy. It also implies that the question of legitimacy cannot be resolved philosophically.

## Keywords

political judgment, political legitimacy, political identity, pragmatism, agonism

## Introduction

“The people demand the fall of the regime,” crowds chanted at Tahrir Square in Cairo in early 2011. The call makes forcefully clear what was at stake: beyond discontent about a particular leader, law, or policy, this was a struggle

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about the legitimacy of the regime as such, touching on the foundations of political order. This question of legitimacy becomes viscerally pressing at critical moments, when a regime's survival is at stake. Yet even where a regime is well established and generally accepted, the question of its legitimacy can be raised, and is answered continually in day-to-day practice, if only implicitly. We all find ourselves confronted by authorities that purport to rule us. Whether we comply wholeheartedly, engage in resistance, or try to ignore them as much as possible, we inevitably comport ourselves toward the powers that be in one way or another. Thus anyone confronted by power also faces a predicament: what practical stance shall I take toward the authorities? Is their claim to rule legitimate?

Philosophers usually approach this as a problem of moral knowledge, seeking to articulate and justify principles that the authorities ought to meet to be legitimate (e.g., Applbaum 2019; Peter 2020). Realist critics regard such moralism as out of touch with political reality. Those who propose constructive alternatives typically search for criteria that are in some sense distinctively "political" (e.g., Sleat 2014; Cozzaglio and Greene 2019). Either way, the theorist is engaged in a codification project (Fossen, forthcoming). Someone confronted by power could then presumably apply such standards to judge the legitimacy of the regime they are facing. Yet despite the best efforts, criteria of legitimacy remain subject to profound disagreement and uncertainty. Of course, the persistence of disagreement does not entail that there is no correct theory. But perhaps it ought to give us pause to ask whether the quest for a theoretical resolution departs from an adequate diagnosis of the problem.

This essay approaches the problem from a different angle by shifting focus from the content and justification of principles (whether "moral" or "political") to the activity of judging legitimacy in practice. By judging legitimacy, I mean distinguishing, from a practical standpoint, whether the regime with which one finds oneself confronted is legitimate or merely purports to be so. Instead of asking, in the abstract, what *makes* authorities legitimate or illegitimate, we take a step back to inquire what it is we are *doing* in distinguishing whether a regime is legitimate or illegitimate, and what it takes to do this well. How does the question of legitimacy manifest itself in practice, from a first-person perspective? What can one do, and what must one know, in order to aptly respond to this question?

This essay does not take on that task in full, but zooms in on one dimension of this problem: 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" (Gibbon and Hawas 2012, 109). 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, the activist Asmaa Mahfouz announced: “I’m going out on the twenty-fifth to protect my dignity as an Egyptian.” She went on to exhort her male peers to join her or forfeit their manliness (Taha and Combs 2012, 78). 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. 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 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, religion or otherwise bear on the legitimacy of the (purported) political authorities with which one finds oneself confronted?

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 2). I then outline three ways of conceptualizing how identity bears on legitimacy that are implicit in the literature (section 3)—the foundational, associative, and agonistic picture. Whereas the first two 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. Each picture harbors a core insight, but none persuasively captures the concrete dilemmas of judging legitimacy in the face of disagreement and uncertainty about who “I” am and who “we” are. Moreover, the ways in which they configure our key concepts—legitimacy, identity, and judgment—are incompatible.

In a dialectical fashion, sections 4 and 5 propose a fourth, “pragmatic” picture, which integrates rational, prudential, and ethical qualities of the practice of judging legitimacy that otherwise seem inconsistent. The view advanced here 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. Judging legitimacy is partaking in a practice of self-constitution and self-transformation. Legitimacy and identity are not separate issues: the question of legitimacy is (in part) a question of who “I” am and who “we” are. But if identity is fundamentally at stake in judging legitimacy, then the correctness of judgments cannot be grounded in a given identity. I propose instead that we think about good judgment in terms of the activity of judging (rather than the correctness of the content of the judgments), and explicate three qualities of judgmental practice: consistency, integrity, and responsiveness. Finally, I suggest that recognizing these virtues in conjunction also involves acknowledging that the question of legitimacy cannot be resolved philosophically.

To be clear, the claim is not that political legitimacy is *reducible* to a question of who you are; there are other dimensions to the problem. For one thing,

the question is also, and equally fundamentally, about *the regime*—its nature, its manner of governing, what it is like (Pitkin 1966). A comprehensive account of judging legitimacy is beyond the scope of this essay. Nor do we here consider other forms of political judgment. Our focus is specifically on the significance of identity for the question of how to relate practically toward the regime with which one finds oneself confronted.

## Preliminaries

I begin by introducing 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,” and *whose* identity we are talking about. As to the first, the question “who?” can be understood in two related but irreducible senses, which I’ll refer to as selfhood and character (Schechtman 1996, 73–74; Ricoeur 1992; Lindahl 2013, 82–83). 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. As Marya Schechtman illustrates, selfhood is compromised in cases of extreme amnesia, where one is unable to recognize a past self that one is continuous with; in contrast, 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 (Schechtman 1996, 74).

With *whose* selfhood and character should we be concerned? To answer “political subjects” is not sufficiently specific. We can distinguish at least three pertinent meanings of the word *subject*.<sup>1</sup> First, being a “subject” means having 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 is a *governmental* sense: being subjected to someone or something—being in their thrall, being ruled. Third, 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

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1. This threefold distinction 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 or agential?), whereas Althusser contrasts “a center of initiatives, author of and responsible for its actions” (agential) and a “subjected being, who submits to a higher authority” (governmental) (Althusser 2001, 82; Foucault 1982, 781).

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 upon 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 instance, historical or imaginary regimes. One might be subjected to forms of power of which one is unaware. And one might act upon 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 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. If we think of judgment in the relevant sense as essentially an exercise of thick 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. By contrast, if thin, experiential subjectivity is enough, then the standpoint of the judge makes no difference. As we will see, this has profound implications for how we think about a theory of legitimacy.

### Three Pictures

How do theories of political legitimacy configure the conceptual relations between identity, legitimacy, and judgment? I outline three views that I find implicit in the literature. To bring out the contrast, the pictures are somewhat stylized, though not, I hope, to the point of caricature.

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 is, objectively. 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, first, that correctly judging political legitimacy consists in applying valid moral criteria to the regime in question. The philosophical task is then to justify 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 individuals, autonomous

agents, or social animals (Nozick 1974; Wolff 1970; Taylor 1985). 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 would 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 (Wolff 1970, 19). 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.

Of course, the foundational identity from which such criteria must be derived is contestable and stands in need of justification. But, on this picture, this questionability is twice removed from the practical predicament of taking a stance toward the authorities, here and now. Doubt and dispute about who we are deep down are relegated to the register of justification, rather than application, and that justification is then indefinitely deferred. 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 (see Wolff 1970, xxviii; Nozick 1974, 9). 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. On this picture, then, identification occurs *prior* to judging legitimacy and is taken for granted in it. It does not offer an account of what judging legitimacy might involve *in the face* of disagreement and uncertainty.

The core idea of the *associative picture* is that it is part of the nature of a political association that governed subjects and authorities have a certain standing vis-à-vis one another, just as being part of a family involves special commitments and entitlements. This picture directs 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. This picture stresses the *ontological* significance of identity: the existence of political relationships of a certain kind constitutes a reason for treating a regime as legitimate (Gilbert 2006; Renzo 2012; Horton and Windeknecht 2015).

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 bonds of membership are in place. In other words, it is a matter of gauging the presence or absence of collective selfhood—the *fact of membership*. The task for a theory of

legitimacy is then to spell out what it means to genuinely be a member of a political community.<sup>2</sup>

The associative picture construes the constitution and breakdown of political relationships as prior to judgment, to be accurately reflected therein. First you become who you are (politically); 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 social fact that grounds judgment. But this construes political judgment as an epistemic problem of getting access to the facts. As such it does not seem to capture the dilemma, from a practical standpoint, of whether or not the relationship in question is genuine and is to be sustained. The same judgment could, in principle, be made by anyone with epistemic access to the situation. Moreover, even if we take the existence of membership as a given, this does not settle the question of how that self is to be characterized. The 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. Depending on the details of the theory, the associative theorist could insist that these protesters misunderstand what it means to be a member of their polity (they *are* members; hence bound to uphold its institutions). Alternatively, the theorist could say that 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. The theorist would be taking sides in a profound political dispute, and participants might want to ask: how can you settle from an observer's point of view what it means to be an Egyptian?<sup>3</sup>

The foundational and associative pictures of how identity bears on legitimacy have in common that they construe identity as a ground from which

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2. Some authors explain what makes membership "genuine" in moral terms (e.g., Mokrosińska 2013), which leads back to the foundational picture. 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 (e.g., Gilbert 2006).
  3. 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 (Horton 2010, 168). But that raises the question how much work the fact of membership can really do to answer the problem of political obligation.

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 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 (from the ancient Greek word *agon* meaning contest or struggle), 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.

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 (Olson 2008). 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 (Butler 1997, 14–15). We could have been different, and can become otherwise, 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.

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?” (Arendt 1998, 178). 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 because 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—“no one is the author or producer of his own life story” (Arendt 1998, 185). 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.

This picture fundamentally reconfigures the relation between legitimacy and identity. If power and agency constitute and characterize who we are, that casts suspicion on the idea that there is a determinate meaning of membership or a foundational sense of self, prior to judgment, in terms of which the question of legitimacy can be resolved. 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 more properly regarded as an *object* of legitimacy claims. When protesters demand the downfall of Mubarak in the name of Egyptianhood, are they not in effect reiterating and reinforcing a dominant nationalist mode of collective



self-understanding—with all its attendant exclusions? 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. 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. In this picture, then, judging legitimacy consists not in applying a given moral norm or a concept of community but in a groundless act of self-overcoming.

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” is not stating a fact, true or false, about what it already means to be Egyptian; rather he is making a power-play (Foucault) or issuing an invitation (Arendt) to conceive Egyptianhood anew. The success of his attempt to characterize Egyptianhood depends on how others will respond. If enough individuals overcome their fear and continue to see themselves in this light, that is apparently what Egyptianhood turns out to have meant—though again only provisionally, subject to further contestation.

One key feature that sets the agonistic picture apart needs to be emphasized. It concerns the sense of subjectivity involved in judging. On the first and second picture, it matters, for whether the regime is legitimate, how *the governed* are properly characterized. As to *who judges*, the two pictures 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. This requires only a thin, experiential sense of subjectivity. On the agonistic picture, by contrast, it is crucial who does the judging. Judging legitimacy is an act of self-transformation; it is to intervene in a play of forces, or a sequence of action and response. One cannot adjudicate, from a third-person standpoint, what it truly means to be (say) an Egyptian.

There is a clear sense in which this picture places disagreement and uncertainty about identities at the heart of judgment. Selfhood and character are at stake in judgment rather than given to it. Yet from a first-person standpoint, the idea that who I am is always contingent and contestable is itself a rather abstract consideration, which, while casting suspicion on 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, contemporary agonists seem averse to theorizing political legitimacy beyond revealing how “the legitimacy of outcomes is always contestable” (Honig 2007, 14). Foucault himself expressed lack of interest in the question “what legitimates power?”, which he considered a form of political thinking “based on legal models” (Foucault 1982, 778)—not something he regarded as a compliment.

And while Arendt saw promise in Kant's notion of reflective judgment for thinking about political judgment, to my knowledge the vast literature she inspired does not include a systematic account of how to judge the legitimacy of a regime (e.g., Arendt 1989; Feldman 1999; Zerilli 2016).<sup>4</sup>

To sum up, 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 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. So prior to judging legitimacy, one must figure out who the governed are deep down (perhaps including oneself, coincidentally), sort out which aspects of their selves (race, gender, family bonds, religion, nationhood, humanity, etc.) are morally significant, and infer criteria from that characterization.
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 in which the governed find themselves (perhaps including oneself, coincidentally). This requires one has a conception of what a polity is and of the commitments and entitlements that characterize members and authorities.
3. *Questionability of identity.* Who you are, personally and collectively, does not determine the regime's legitimacy. 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. This implies that the

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4. Not least among the difficulties here is the fact that for Kant aesthetic judgment is decidedly non-practical. For it is precisely our disinterestedness and impartiality regarding the object that open the space for the free interplay of our faculties from which aesthetic judgment emerges (Kant 2000).

forms of knowledge called for by the first two pictures cannot be first-personally at one's disposal in the sense required. Who you are is not constituted and characterized prior to judgment; judging shapes who you are, and makes or breaks relationships.

Together these pictures appear inconsistent, because each configures the relation between identity, legitimacy, and judgment differently. Yet if each of the core ideas captures something important—the inferential and ontological significance of identity and its inherent questionability—then it seems that judgment must, yet cannot, be grounded in identity (be it personal or collective).

## A Pragmatic Picture

The current 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. Self-constitution and self-characterization are understood neither as prior to judgment, nor as its product, but rather as integral aspects of the practice of judging legitimacy.

From a pragmatist perspective, legitimacy is not a property that regimes have or fail to have, independently of one's perspective on them, but rather a normative status essentially attributed or withheld from a practical point of view. Judging legitimacy is adopting, shifting, or maintaining a practical stance toward a regime (Fossen 2013). In other words, distinguishing whether or not the regime is legitimate is to take and treat the regime in certain ways rather than others. In this vein, I propose to conceive judging legitimacy as an ongoing practice—not a mental decision in which theoretical knowledge is brought to bear on a particular situation, nor as a singular transformative performance, but as a continuous and open-ended set of activities. To conceive judgment as a practice is to suggest that judging is not just a matter of forming an opinion or making a decision, mentally. Judging legitimacy is *doing* something, comporting oneself in a certain manner (Martin 2006; Weidenfeld 2011), and this activity is extended in time (Etxabe 2014). Hence *agential* subjectivity is involved. Judgment so conceived has a public face: judgment lacks worldly reality and is hence politically meaningless if it fails to make an appearance. To conceive this practice as ongoing is to suggest that judgmental performances can be understood only as situated in a longer course of action, and their significance depends also on what else one is doing, and what happens afterward. Just like 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 (even though a chess game is not ongoing and open-ended), we need an account of the *practice* of judging to make sense of what goes on in a particular moment of decision (Hope 2020, 466–67).

Kant's influential distinction between "determining" and "reflective" judgment provides a useful point of contrast. In determining judgment, the judge deploys a given universal, an empirical concept or normative standard, and determines how a particular object or action fits within that frame (subsuming the particular under the universal) (Kant 2000, 5:179). In reflective judgment—paradigmatically judgments of beauty—you have to somehow qualify the object without having appropriate concepts or criteria given in advance. 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 (Kant 2000, 5:217). In both cases, the act of judgment is a singular deployment of a mental faculty. An aesthetic encounter (following Kant) makes you feel and think, but not act, in a distinctive way. The agonistic picture goes beyond this in construing the encounter of subject and object as decidedly practical—judgment is a performance. But it is still understood as a singular act. On the pragmatic view, the act of judgment is no longer conceived as a self-contained episode: particular judgments are understood 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.

The question now is how to characterize that practice—to flesh out the forms of activity that constitute judgment (concerning legitimacy). And my suggestion is simply that part of the answer—one of the activities in which judging legitimacy consists—is the practice of constituting and characterizing political selfhood. Identity is integral to judging legitimacy; it is part of what is practically at stake, what hangs in the balance in judging.

I said "part of the answer" because judging legitimacy is complex; there are other constitutive activities. I am here considering only how the *subject* of judgments of legitimacy figures in such judgment. The question of how judgment relates to its *object* (what I have been calling "the regime") is equally fundamental. And besides the roles of subject and object in judging (*who* judges *whom* [or what]?), we should also consider the significance of *where* and *when* a struggle for legitimacy takes place. But I shall not take up those aspects here.

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, a nation bound together by blood, soil, culture, or shared institutions, and so on. Moreover, it typically articulates various classes of subjects (citizens, residents, visitors, illegal aliens, enemy infiltrators) 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” [Althusser 2001]) 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.

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 one has a conception of who one is 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: “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 thus 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-characterization, 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* (cf. Lindahl 2018).

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 self *by* oneself—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 who to stand with. Judgment, so conceived, is an intersubjective practice of community building and breaking in which no 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 section.

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—for example, good parent, religious believer, 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.
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 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.

## 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. 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. 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 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.

## Consistency

The question of legitimacy presents us with the challenge of rationally integrating our political identity (as a member/non-member of a governed collective, characterized thus-and-so) with who we are in other respects (human being, affiliate of this or that group, and so on). 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. 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:

1. 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 senses of who I am intact.

2. 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 (cf. Laden 2012, 237–41).

Suppose you aspire to be a good parent to your children, and you think 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 as characterized by the regime. The two views have clashing implications, for example, for which bedtime stories to read to the kids. 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 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. Finally, perhaps you no longer feel that membership of 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, revising them 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 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. 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 (intra-perspectival) matter of who they are, from your own point of view, but also (inter-perspectivally) 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.

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 (Brandom 1994; Laden 2012; Kukla and Lance 2009). Drawing these inferences (from your commitments and theirs) is not just a mental exercise of tracing pre-established connections that 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” (Khalil 2012, 22). Our man with the sign “I used to be afraid, now I am Egyptian” 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 genuine Egyptianhood is incompatible with living in fear, from which it follows that anyone who does not overcome their fear is not a true Egyptian.

### *Integrity*

Judging well is not just a matter of coping with incompatibilities among the contents of one's personal and political 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 one's judgmental comportment contributes to constituting and characterizing one's selfhood as one envisions it:

being involved 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. As governed subjects we comport ourselves toward the regime in *some* manner, and our doing so contributes, actively or passively, to the preservation, transformation, 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.

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 regime 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 (cf. Meckstroth 2015). Integrity therefore involves anticipating how people will respond. Good judgment calls for a sensibility to the consequences of one's actions, attunement to the balance of forces, and acknowledgment of the strength of bonds of affiliation. One cannot expect people to suddenly renounce their national affiliation 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 nature of the relations of power and commitment in which subjects find themselves. 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 (McFadden 2015)—and hence ineluctably insecure and uncertain. Judging well in this respect is not a matter 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 to mobilize people's sense of belonging, or their fear. 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 self-immolation of Mohamed Bouazizi in Tunisia. Although his destruction of his body could be interpreted as a desperate abnegation from selfhood altogether, Banu Bargu makes a compelling case for understanding it as a profoundly political act. By radically refusing to be who the authorities take 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 selfhood deemed impossible in the moment, a self that "asserts agency at the moment of its abnegation" (Bargu 2016, 33). 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 power, would have been to admit that, apparently, *they* could.

## 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.

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 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. 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 (that is, 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 loyal subject or traitor, as if on autopilot—oblivious to who you take yourself to be, registering nothing you say or do 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 (cf. Lindahl 2018; Havercroft and Owen 2016; Zerilli 2016). This involves practically manifesting the attitudes just described, relating to oneself and to others as judges. 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-characterization. You become, as it were, part of the regime's autopilot circuitry. Unilateralism would be a manner of treating others such that nothing they could say or do would be taken as an occasion for questioning, 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. 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.

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

## 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. Judging legitimacy is to partake in a practice self-constitution and transformation, which makes or breaks relationships, shapes who you are in both the first-person singular and plural, and is inherently open-ended. This picture highlights the inferential and ontological significance of identity for political legitimacy, as well as its inherent questionability.

According to this picture, it matters profoundly whether the regime at issue is one you actually find yourself confronted with: from a practical point of view, the question of legitimacy places one's own selfhood and character in question. Of course, you can *say* of any regime, whether actual, historical, or imaginary, that it is legitimate or illegitimate. But what does one do in saying this? 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 sense at issue here. Expressing one's opinion

from an external standpoint simply doesn't involve the kind of commitment at stake in a struggle over collective selfhood in the face of authority.

According to Kant, you cannot intelligibly claim that something is beautiful if you have never actually encountered it, however much you learn about it from historical sources or the testimony of others. What gives rise to aesthetic judgment is the *interplay* between subject and object; you must not just be subjectively aware of the object's existence but concretely encounter it in the world (Kant 2000). To appreciate beauty is to experience something akin to governmental subjectivity: you must allow the object to hold you, as it were, in its thrall. Imagine a group of philosophers in a seminar room disputing the aesthetic quality of the first performance of Shakespeare's *Macbeth* (which they could not have witnessed) or of Kubrick's *Napoleon* (which was never made) in an effort to construct a theory of beauty. 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.<sup>5</sup>

If the pragmatist picture I have outlined is compelling, then the concrete encounter between subject and authority has a similar significance for the question of legitimacy as the concrete encounter with an artwork has (if Kant is right) for judgments of beauty, although the dynamics of these encounters are very different. If we think of judgment as an exercise of thick subjectivity—essentially involving also acting and being governed—then it makes sense to speak of someone as judging legitimacy only in the context of a concrete encounter with a regime. There is a profound difference between the question “who?” as asked from a participant's and from an observer's point of view: from a first- and second-person standpoint, engaging with this question is transformative, partaking in constituting and characterizing the self at issue, in a way that the third-person standpoint is not. 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. And thinking about a hypothetical regime might help to clarify or display your own ethical views. Either way, though, you would be in a structurally different type of position vis-à-vis the authorities in question and engaging in a qualitatively different form of practice (the pragmatics of which remain to be examined). Even if we commonly use the word “legitimacy” in these different types of contexts, it seems that, from a pragmatic point of view, we are deploying different concepts.

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5. By analogy, we cannot simply assume that “*all* relevant political theorists are supposedly competent users of the concept of legitimacy” (Erman and Möller 2014, 493). A theory of legitimacy needs to examine what it is to judge legitimacy in practice (Fossen 2019), just as real philosophers of aesthetics try to think through the involvement of subject and object in judgments of beauty.

This calls into question the assumption that “we always have a place to stand from which to make these judgments about legitimacy” (Applbaum 2019, 247), as well as the aspiration for a form of philosophical knowledge that solves the practical predicament faced by subjects confronted by power. 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 source of knowledge to adjudicate who is correct.

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## Author Biography

**Thomas Fossen** is an assistant professor of political philosophy at Leiden University and, in 2020–2021, a member of the Institute for Advanced Studies at Princeton. He is currently working on a book on political legitimacy and judgment. He has published on political representation, political legitimacy, political obligation, agonistic and deliberative democratic theory, voting and elections, and the work of Jürgen Habermas, Robert Brandom, and Friedrich Nietzsche.