

Legitimacy and Institutional Purpose

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Abstract: Institutions undertake a huge variety of constitutive purposes. One of the roles of legitimacy is to protect and promote an institution's pursuit of its purpose; state legitimacy is generally understood as the right to rule, for example. When considering legitimacy beyond the state, we have to take account of how differences in purposes change legitimacy. I focus in particular on how differences in purpose matter for the stringency of the standards that an institution must meet in order to be legitimate. An important characteristic of an institution's purpose is its deontic status, i.e. whether it is morally impermissible, merely permissible, or mandatory. Although this matters, it does so in some non-obvious ways; the mere fact of a morally impermissible purpose is not necessarily delegitimizing, for example. I also consider the problem of conflicting, multiple, and contested institutional purposes, and the different theoretical roles for institutional purpose. Understanding how differences in purpose matter for an institution's legitimacy is one part of the broader project of theorizing institutional legitimacy in the many contexts beyond the traditional context of the state.

Keywords: political legitimacy, right to rule, international institutions, institutional purpose

The purpose of the state matters a great deal for the debate over state legitimacy. The most basic conflicts between political anarchists, statist, and cosmopolitans, for example, often comes down to whether or not the state is actually necessary or sufficient for achieving some purpose. Within statism, Rawlsian political liberals reject any perfectionist aim, libertarians claim that the state can only undertake minimal functions, and so on. How we conceive of the purpose of the state matters for our understanding of the state's legitimacy at a fundamental level.

In this article I explore how institutional purpose matters for institutional legitimacy in general.¹ Most discussions of legitimacy consider a bundle of specified institutional features that characterizes a particular institution or institutional type (Collingwood and Logister 2005, Sangiovanni 2013). For example, the state's purpose is often considered alongside how it uses coercion and claims authority. Thus it is often difficult to see the role that purpose plays apart from other features of the institution. While complete theories of legitimacy

eventually need to account for the bundle of features as an interdependent whole, it also helps to theorize the features independently of one another.

Such independent theorizing is especially important as we develop theories of legitimacy for new varieties of institutions, especially beyond the state. Having theorized the features independently, we will be able to see more clearly how they interact in unique combination. We will also be better able to investigate whether theories developed for particular institutions are applicable more broadly. For example, it is an open question whether democratic conceptions of state legitimacy are appropriate for institutions that differ drastically with respect to purpose, means, and other features. This is true of political institutions above the state, like the United Nations, the European Union, or institutions with more specific remits, like the World Trade Organization. Answering whether or to what extent democratic standards apply to such institutions requires us to investigate how particular features of institutions matter for legitimacy, both independently and in various combinations. My goal here is to show a number of complex ways that institutional purpose matters for legitimacy, although complete consideration of even this one feature is beyond the scope of this article.

Here is the plan. In the first section I sketch an account of institutions and institutional legitimacy, showing how general features of institutions establish a *prima facie* justificatory baseline. In the second section I consider how the deontic status of an institution's purpose matters for its legitimacy. In section three I complicate matters, considering how degree of achievement of purpose matters and distinguishing extant purpose from hypothetical justificatory purpose. In section four I raise a variety of problems for theorizing extant purpose. Finally, in a brief concluding section, I suggest a way forward with a more minimalist understanding of institutional legitimacy.

I. Institutions and Legitimacy

In the sense I am concerned with, institutions primarily consist of two elements: norms that define various institutional roles or offices and individuals who accept the norms, thereby occupying roles (Miller 2009, p. 25). By defining the roles in a coherent way, institutions are able to carry out their most basic function of coordinating individuals' actions.² While this broad definition might capture informal collections of norms, for example "the institution of marriage," my focus here is on more formalized cases. Formalization enables collections of individuals to act collectively and so raises the question of the standing to act collectively.

At its core institutional legitimacy constitutes a normative status or standing, which an illegitimate institution of that type lacks.³ For example, state legitimacy is usually understood as the right to rule: legitimate states have the

right to rule and illegitimate states do not. This standing correlates to a specific uptake on the part of others; the right to rule standardly correlates with a duty to obey. The right to rule cannot capture the legitimacy of all institutions because many do not rule at all. Regardless of the type of institution, though, a legitimate token of that type has a standing that illegitimate tokens do not.

The nature of this standing is tied to legitimacy's inherently practical role: it coordinates our collective responses to institutions in order to enable institutions to function (Buchanan 2013, Adams 2018). To call an institution legitimate is to ascribe it a standing that defines its relationship to various other individuals and groups in such a way as to protect its ability to exist and to function. To call an institution illegitimate is to deny that it has such a standing and so to deny it such protection.

For such an evaluation to be coherent, two conceptual preconditions must be met. First, there must be a coherent whole that can be evaluated and attributed a distinct normative standing qua collective actor. Second, that coherent whole must have a constitutive functioning that is protected. We must have a bearer of standing and a way to delimit its protections in a principled way. Institutional purpose contributes both to organizing a group of people into a coherent whole and to defining that group's constitutive functioning.

Purpose shapes and structures a collection of norms into a viable whole, capable of coordinating individuals. Any collection of norms is bound to have conflicts and tensions. There is an indeterminate number of ways that any conflict between norms could be resolved. Why should this office or role have these powers? Why should it relate to other roles in this way? Without a guide to resolve these tensions, the collection will be incoherent, incapable of coordinating people in an organized way. The guide is the institution's purpose.⁴

The constitutive functions of an institution are those functions without which it could not undertake its defining purpose. It is these functions that are the focus of the standing that legitimacy constitutes and so they are a useful criterion for individuating distinct institutional types.⁵ Universities and businesses are distinct kinds of institutions primarily because of their distinct purpose and constitutive functions. A private home that becomes a museum memorializing its famous occupant becomes a new kind of institution because its purpose and constitutive functions change.⁶

Institutional purpose need not be something that is explicitly and intentionally held by all or even any members of the institution; instead it is an organizing principle that is required to make sense of any collection of norms as being bound together in such a way as to contribute to the constitution of an institution. This purpose can be very simple; at the limit, as explored below, an institution's purpose might simply be to share a set of norms. While institutional

purpose can be merely implicit or very simple, it is more common for institutional purpose to be explicit and to aim at further goals.

Given that institutions are necessarily directed at and shaped by some purpose, the most basic normative question for any given institution is whether it is an appropriate tool for achieving the purpose in question. This question admits of various interpretations. We might ask whether the institution is the most efficient way to achieve some purpose. We might ask whether it is the only way to achieve some purpose—whether the state is the only way to achieve justice, for example, or whether membership in a particular church is the only way to get into right relationship with the divine. Among these interpretation, legitimacy asks: does this institution have the *right* to pursue its purpose? Must we collectively let this institution exist and undertake its constitutive functions, or not?

For an institution to be legitimate must mean that it has the right to exist qua means for pursuing its purpose or, as I call it, the right to function. As I understand it, the right to function is a claim-right against coercive interference in the constitutive functioning of the institution.⁷ Coercively interfering in the constitutive functioning of an institution amounts to preventing it from pursuing its purpose and so renders it a non-viable token of its type. Legitimacy, regardless of whether we conceive of it as also including anything more robust such as a right to rule, must include the right to coordinate people towards achieving some purpose.

In order to inquire into the role of institutional purpose in a relatively ecumenical way, here I focus on the right to function as the core of legitimacy on any account. Focusing on the right to function allows us to ask the following general questions: under what conditions does a group of people have the right to accept a set of norms and coordinate their behavior in order to collectively pursue some purpose, such that others have a duty not to prevent them from so doing? How does the nature of that purpose matter for the conditions under which that right can be gained or lost?

Inquiring into these questions is the task of the rest of the article, informed by two important features of institutions in general. First, institutions produce a variety of goods by their very nature, including the goods of association, cooperation, and organization (Levy 2015). Further, individuals' fundamental rights to self-determination include both the right to free association and the right to accept and abide by norms that structure our lives. An institution has a prima facie case for its right to function simply because it is a result of the free, protected choices of individuals and because it generates certain goods.⁸

The strength of this prima facie case is a matter of some contention that I do not address here but which matters a great deal for our final understanding of the legitimacy of a variety of institutions. One likely implication is worth noting

because it also helps clarify the role of institutional purpose. There are many institutions that do not seem to have a purpose in the strong sense that, for example, we associate with institutions that have mission statements. A neighborhood's social club doesn't undertake any grand programs. But these institutions do have a purpose: organizing people. Regardless of whether they also pursue some further purpose, forming an institution allows them to gain the benefits of association and cooperation in a structured manner, reliably securing various goods. The goods of institutionalization can be the sole purpose of an institution. On my reading of the strength of the *prima facie* case for institutions' right to function, such limited institutions are legitimate *ceteris paribus*.

It is worth asking, though, why we should conceive of an institution as the result of voluntary choice, and so worthy of the protections we grant such choices.⁹ Some institutions are the result of the voluntary associational choices of their members and some are not; membership in the state is most commonly not a voluntary act. Of course, when an institution is not voluntary in the right way, this raises immense questions for its legitimacy. The question I must address here is a methodological one: why take the voluntary institution as the default case, from which we construct our initial understanding of legitimacy? We might instead take involuntary membership in institutions, like the state or an ethnic group or often a religion, to be more fundamental.

In short, I think that it is much more difficult to make sense of legitimacy if we take involuntary membership as the base case. Being involuntarily obligated to join some group and to abide by its norms runs directly contrary to liberal egalitarian individualism, which is the general normative framework within which I am making my argument. Understanding legitimacy is difficult and nuanced enough in the case of voluntary institutions that adding the fundamental problem of nonvoluntariness seems to make the question profoundly difficult to answer. But ultimately I am a methodological pluralist and am happy to admit that every starting point, including my own, will illuminate some issues but obscure others.

In opposition to the *prima facie* positive case for an institution's legitimacy arising from voluntary choice and freedom of association, there is a *prima facie* negative case because institutions constitute a concentration of power precisely because they gather and coordinate the efforts of many individuals. Choosing to concentrate any significant amount of power is *prima facie* unjustified for a variety of reasons. One is that concentrating power is risky and people have rights against unreasonable levels of risk. Another is that, at least according to some views, concentrating power is in itself a harm when it is not controlled, e.g. on views which construe freedom as non-domination and domination as arbitrary power (e.g. Pettit 1997). So there is also a *prima facie* case against an institution's right to function because it generates certain risks or harms, some of which others

may have rights against. The strength of this case largely depends on the type and magnitude of power in question and so on the size and nature of the institution. Small social clubs are legitimate *ceteris paribus* in part because they concentrate very little power. With these two baseline elements of the case for institutional legitimacy in hand, we turn to the role of purpose.

II. Deontic Status

I noted at the outset that purpose is only one of the features of an institution that matters for an institution's legitimacy. Even narrowing my focus to only one feature, here I cannot explain all the ways in which purpose matters for legitimacy. For example, it is clear that purpose will shape how an institution functions and so what further claims and rights will follow from the more general right to function, yet I do not pursue this issue here.¹⁰ Instead I focus on only one question: how purpose matters for the *stringency* of the standards that an institution must meet to be legitimate. I characterize this as how institutional purpose can raise or lower the justificatory bar for the right to function. Some purposes—or feature of that purpose—will raise the bar, i.e. an institution with that purpose must meet more stringent standards to have the right to function.

The standards for state legitimacy are more stringent than those for your local book club: the justificatory bar for the state's right to function is higher. The state has to separate out its powers, has to consult everyone within its ambit, must have limited terms for officials, must explain itself to its members, and so on. Your book club doesn't have to meet those same standards: it doesn't have to be democratic, or even formalized, in order to have the right not to be interfered with in pursuing its constitutive purpose. This is intuitively plausible. The question I address in this paper is how different institutional purposes matter in this kind of way.

Perhaps the most obvious evaluation we can make of an institution's purpose is in terms of its deontic status: is the purpose morally mandatory, merely morally permissible, or morally impermissible? The deontic status of an institution's purpose matters a great deal for its legitimacy. But we should not be too quick even at this early stage.

The first tempting thought is that an institution with a morally impermissible purpose is *ipso facto* illegitimate. This is too quick because of the *prima facie* case for legitimacy that institutions have in virtue of their members' rights to free association and self-determination more generally. This gives some weight to letting the institution exist—which is to say, letting members accept institutional norms and fulfill institutional roles. This might not be very much

weight but it is enough to say that the simple fact of an impermissible purpose is not necessarily delegitimizing.

Consider an anti-accountability club: a club that exists to coordinate people so that they can more efficiently violate oaths of sexual fidelity. Two facts about this social club seem to me to be true: (1) its purpose—more efficient breaking of oaths—is morally impermissible but (2) it has a right against coercive interference. This is related to the idea that breaking those oaths is impermissible but not the sort of wrong that others are justified in coercively preventing. The mere fact of impermissibility does not entail the absence of a right against interference.¹¹

In the individual case, this amounts to the claim that people have the right to do wrong (Waldron 1981). We have standing self-determination rights not to be interfered with which are not forfeit merely because we choose to act impermissibly. There are a range of impermissible acts that fall within our realm of self-determining choice that rights to non-interference protect. The same holds both of institutions qua products of our ongoing choices and of institutions qua collective actors. The right to do wrong has multiple grounds: the basic value of self-determination, the disvalue of (especially coercive) interference, the value of living together in a community of equals who all make mistakes and also all disagree, i.e. the demands of the burdens of judgment and pluralism, and so on.

All that said, the right to do wrong is limited in its scope. An institution like the anti-accountability club can be legitimate despite the fact that its purpose is impermissible because it is the sort of impermissible purpose that falls within the right to do wrong. But clearly many impermissible purposes fall outside the scope of the right to do wrong. For such institutions, our initial intuition is correct: merely having that purpose renders the institution illegitimate. Human trafficking is such a purpose; all institutions that have human trafficking as their purpose are necessarily illegitimate (the type is illegitimate). Articulating the principled difference between impermissible purposes that are automatically delegitimizing and those that are not is an important task I cannot undertake here.

Moving away from impermissible purposes, a merely permissible institutional purpose is the standard case and in some ways the easiest to theorize on its own. The question is what other features of these institutions could override the *prima facie* case for non-interference grounded in morally permissible, rights-protected norm-acceptance and free association. For example, two institutions with the same purpose of financial gain might differ in their legitimacy because of the means they use to pursue that purpose: your local grocer uses fair market transactions for financial gain and so is legitimate *ceteris paribus*, while an extortion ring uses threats of egregious unjust harm for financial gain and so is

illegitimate. Since our focus is on how institutional purpose matters for legitimacy, I leave these issues aside.

One general point before moving on: the prima facie case for the legitimacy of an institution with a permissible purpose has certain implications for what could delegitimize. If the prima facie case grounds a right to non-interference *ceteris paribus*, the question is how a right to non-interference can be forfeit. Rather than simply a balance of costs and benefits, the prima facie case shifts the justification into a deontological mode. I understand rights forfeiture to depend on culpable wrongdoing: an agent only forfeits a right she has if she violates others rights, making her liable to defensive, preventive, or punitive interference. So the mere fact that an institution with a permissible purpose is inefficient or produces some harms is not necessarily delegitimizing. Only (sufficiently egregious) rights violations ground a case for illegitimacy.

The final possibility with respect to deontic status is that an institution's purpose is morally mandatory. This matters in at least two non-obvious ways. There are certainly more. In addition to the particular points I make, these arguments show that the role of institutional purpose is sufficiently complex to be worthy of independent and detailed treatment.

First, the normative bar for the legitimacy of an institution with a morally mandatory purpose is plausibly lower compared to an otherwise identical institution that undertakes a non-mandatory purpose. This may be surprising. It may seem that precisely because a morally mandatory purpose is so important, we should hold the institution that undertakes it to higher standards. But the idea that a morally mandatory purpose lowers the normative bar for justification becomes clear once we take seriously the idea that an institution is a tool that is by its nature risky.

For example, it is unjustifiable for Jane the ambulance driver to vastly exceed the speed limit just for fun, primarily because of the risks to bystanders. But it is justifiable for Jane to vastly exceed the speed limit when driving a seriously injured person to the hospital even if it involves the same level of risk to bystanders. Entertainment is a morally permissible goal but cannot justify vast speeds given the sorts of risks involved. With respect to the same risks, though, the mandatory purpose of rendering life-saving aid renders speeding justifiable.

I express this difference as a "lowering" of the justificatory bar or burden on speeding. This is to capture the idea that a more demanding purpose can justify employing a greater range of means, including riskier means. When Jane is trying to save a life, Jane can justifiably impose greater risks on bystanders than she can for entertainment. *Ceteris paribus*, being obligated to act towards some aim means that a greater variety of costs, harms, and even wrongs can be risked than when merely voluntarily undertaking some aim. In general it is easier to justify risky

activities to do more important things. (Parallel points hold for comparisons between morally mandatory purposes of different import.)

As argued above, the existence and operation of institutions is inherently risky because institutions concentrate power and thereby enable much more potentially impactful activities. A morally mandatory purpose can justify a riskier and even more harmful institution: an institution that is bigger, uses riskier means, and even violates rights sometimes. Consider criminal justice institutions, which we know will sometimes egregiously wrong people because sometimes innocent people are punished. These wrongs do not automatically render such institutions illegitimate. If they did, no human criminal justice institution could ever be legitimate because all such institutions are fallible. Yet the same fallible punitive institution is obviously illegitimate if it is set to purposes other than our most demanding and important ones.

This example brings us to the second point. A morally mandatory purpose makes the question of feasible institutional alternatives relevant (Pogge 2008, pp. 25, 182). If there is a task that we are obligated to undertake and an institution is the only way to undertake it, then there is a very strong case for having an institution even if it is quite bad in certain respects. (This does not necessarily entail that when we are undertaking morally mandatory tasks, any institution no matter how bad would be legitimate if there was no feasible alternative. Sometimes the absence of any institution and so the failure to achieve the purpose is preferable, with reparative and ameliorative duties becoming the main focus.) But just because we need some institution to pursue a particular mandatory purpose does not mean any institution which pursues it is legitimate. Its legitimacy also depends on comparisons to feasible institutional alternatives.

Consider a morally mandatory task like providing medical care to sick people. Addressing health on an ad hoc basis is massively inefficient and very costly. To provide adequate care to the ill and health security for everyone regardless of current health status, we need institutions that train and employ medical professionals and are ready to treat people as necessary. Now compare the best, most well-funded medical institution in the United States from the mid-nineteenth century to a medical institution now; in particular consider the sorts of treatments that they make available and are competent to deploy. In the past, it was infeasible to have anything nearly as effective in treating illness as we have today, mostly because of a lack of medical knowledge and technical capacity.

The standards we hold our medical institutions to depend upon our capabilities because capabilities partly determine which institutional alternatives are feasible. In the nineteenth century there were no feasible alternatives to, for example, palliative care for cancer patients because we didn't understand cancer very well and had no knowably effective treatments. So a medical institution in

the mid-nineteenth century that did not have any effective cancer treatments could very well be legitimate: it could have the right to carry out its tasks, to serve as a cooperative venture with the aim of providing medical care. If we transplant that medical institution, with all its capacities and equipment intact, to our time, it is illegitimate. The only thing that has changed is that there are now better feasible alternatives because we know much more and have much better technology. We should not let a medical institution with such poor treatments serve a contemporary community because we can (relatively easily) establish an alternative institution that serves the same mandatory purpose much better. When an institution undertakes a morally mandatory purpose, the importance of achieving that purpose can lower the justificatory bar such that the institution can be legitimate despite features that would render it illegitimate were there any feasible alternative institution for pursuing that purpose without the objectionable features. The presence or absence of alternatives can change whether it is legitimate.

On the other hand, when considering a merely morally permissible purpose, there is very little reason to have a harmful institution and so the presence or absence of feasible institutional alternatives is irrelevant to an institution's legitimacy. Whatever permissible purpose the institution was undertaking can by definition permissibly be abandoned since it was not obligatory. The features that make it objectionable render it illegitimate even when there are no feasible alternatives because the reasons to pursue its purpose at all are quite weak. Feasible institutional alternatives only matter for an institution's legitimacy when it is undertaking a morally mandatory purpose. The deontic status of an institution's purpose matters for legitimacy by setting the justificatory baseline or bar in a way that no other feature does.

III. Complications

In this section I uncover two complications and show how they need to be considered in order for us to more fully understand the role of institutional purpose for legitimacy. First, so far I have been relying on an ambiguity regarding what it means for an institution to undertake a specific purpose: whether we are considering cases where institutions actually achieve their purpose or cases where institutions merely attempt to achieve their purpose and may fail. This raises a variety of further complexities.

First, with respect to certain kinds of impermissible purposes, it may be that we only think institutions are legitimate when they mostly fail to achieve their purpose. Sometimes this is how we think of authoritarian or anarchist political parties in democracies.¹² So far as those parties fail to achieve any

widespread support and do not threaten the democratic character of the polity, we think they should be allowed to carry on despite the fact it would be impermissible to bring about authoritarian governance or anarchy. The familiar reasons concern the value of free expression and association as well as the disvalue of concentrating and exercising power of certain kinds, especially with respect to suppressing political views. But it is also plausible to think that should such a party gain sufficiently widespread support and begin to achieve its purpose, it would be illegitimate and we would be justified in shutting it down with coercive force.

Second, with respect to merely permissible purposes, degree of achievement probably does not matter very much. Whether they succeed or fail may matter a great deal for the personal projects of the members, or even the community, but their failure does not render them illegitimate because it was up to them whether to undertake the purpose in the first place. Things are more complicated with respect to mandatory purposes.

The first thought is that failing at mandatory purposes is particularly bad—indeed, by definition wrongful—so institutions that fail to achieve a mandatory purpose are *prima facie* illegitimate. This ignores the fact, though, that some purposes are incredibly difficult or necessarily incomplete. I take justice to be a purpose with both features: it is almost impossible to do well and is a task that has no endpoint because even a just state of affairs needs to be sustained and protected intergenerationally, not to mention adaptive to changing contexts. If we think perfect—or even close—achievement of mandatory purposes is required for legitimacy, then any (human) institution with justice as its purpose will almost certainly be illegitimate. We need a more expansive and humanist understanding of legitimacy than that. Legitimacy is not an exercise in ideal theory.

This is not true of all mandatory purposes, some of which may have a determinate completion point that is relatively easy to achieve. For such purposes, failing to approximate the purpose or even simply failing to achieve it may render the institution illegitimate—again, assuming that there is some feasible institutional alternative that could do better (which is very likely given an easily achieved purpose). To return to a previous example, a contemporary medical institution that failed to mend broken bones or cure a common infection would be illegitimate because we know how to achieve these ends quite easily; a medical institution that failed to cure all kinds of cancer, on the other hand, can still be legitimate.

The second complication is about the role of purpose in justifying an institution and arises from questioning the standard strategy used in theorizing state legitimacy. Generally, questions of state legitimacy proceed from a description of the defining features of the actual extant institutions that we call

states, especially including their relation to the basic structure, claims to authority, and widespread use of force. The question is then asked: how could an institution with these features actually be justified in some sense?¹³ Theorists then argue that some *hypothetical* purpose could justify such an institution. This theorizing happens at the level of institutional type. The next step is to apply the theory to particular institutional tokens, arguing that states that do not undertake the justifying purpose or which undertake any other purpose are illegitimate.

This picture, even oversimplified in this manner, clearly only works in some cases.¹⁴ It presumes a stable description of institutional features out of which we can construct an institutional type and to which the hypothetical purpose is then related. But such stability is not a feature of all institutions. In the case of the state, we have data for theorizing in this manner because there are hundreds of states and have been many similar but distinct institutional types over history. We have very few such resources in the case of many new international and transnational institutions, some of which are the sole token of their type.

Especially for rarer institutions that are not tokens of an entrenched type like the state, it may also be the case that they change their features dramatically over time, including their purpose. The European Union has become a robust, almost state-like institution but it began as a common market for specific goods. We could theorize the legitimacy of each time-slice of the institution but we should also concern ourselves with more liminal moments, especially because the EU is still affecting people's lives even in its liminality. The state's features are so worrying, and the purpose so demanding, that many possibilities for institutional change are in some ways normatively closed to us. When we consider institutions beyond the state, though, such change is a much more persistent feature that requires our attention.

In addition, we often want to work from purpose to other features rather than, as in the case of sociologically identified institutions like the state, from other features to purpose. Consider a purpose that we have not yet attempted to undertake. At that point the question concerns institutional design: given our purpose, what other features must the institution have or lack in order to be legitimate? The above strategy also presumes that the other features will importantly limit the purposes under question because otherwise the theorizing won't make any headway. For an institution with state-like features, the *prima facie* case is heavily against its legitimacy and so theorizing legitimacy involves trying to find a potentially legitimating purpose. For more common, benign institutions, the *prima facie* case supports legitimacy, so theorizing is more focused on what purposes (and other features) are delegitimizing.

Further, often we do not want to disaggregate institutional purpose from other features as I have so far been doing. For often we are not concerned with

institutions defined by their features independent of purpose but with institutional wholes that include purposes. Here institutional purpose is not a hypothetical posit of the theorist but is part and parcel with the sociological description. For example, it makes sense to ask: is the United Nations, given these features including this stated purpose, legitimate here and now? To answer this question, we do need some idea of whether the purpose in question is justifying but we identify the purpose by the fact that it actually is the purpose of an extant institution rather than by its justificatory role. We may not need to identify a hypothetical justifying purpose at all to say that this extant purpose cannot justify the institution as it exists.

Identifying an institutional purpose could be the starting point of our theorizing, the goal, or something in between. How purpose matters for legitimacy depends in part on the variety of ways that judgments of legitimacy are deployed.

IV. Extant Purpose

Often we want to work with extant purpose, i.e. what purpose a particular institution undertakes as a descriptive, not prescriptive, matter. This matters most clearly when we ask whether an institution's extant purpose matches a previously identified justifying purpose or when we ask whether a particular institution with this specific extant purpose is legitimate without a fully developed theory of legitimacy for that institution in hand. There are at least four problems when considering extant purpose: the identification, multiple purposes, contestation, and diachronicity problems. They are more pressing in cases beyond the state but arise for theorizing state legitimacy as well.

The first question is how we identify the extant purpose in order to compare it to the justifying purpose. This may not seem like much of a problem: many institutions profess to undertake a specific purpose, for example as articulated in mission statements. The United Nations provides a good example. Article 1 of its charter explicitly lays out four purposes: (1) to maintain international peace and security, (2) to develop friendly relations among nations, (3) to achieve international cooperation in solving international problems and in promoting respect for human rights, and (4) to be a centre for harmonizing the actions of nations for these common ends (*Charter* 1945). When looking at the activities of the UN, we can see how many of its actions align with these purposes and how its many subagencies often take pains to explain how their activities forward these aims. It is plausible to accept that these are actually the UN's purposes. Yet it would be exceptionally naïve to simply accept the professed purpose of any given institution.

The Constitution of the Ku Klux Klan declares that the organization desires “to promote patriotism toward our Civil Government; honorable peace among men and nations; protection for and happiness in the homes of our people; manhood, brotherhood, and love among ourselves, and liberty, justice and fraternity among all mankind’ (*Constitution* 1921). Yet it is clear that this is not the extant purpose of the KKK. What it declares and what it does are two different things. (This makes sense for institutions with unpopular and impermissible extant purposes, for they will want to hide behind claims to permissible purposes to bolster their claims to legitimacy and to the protection legitimacy provides.) We need a way of identifying extant purpose beyond taking institutions at their word because some institutions do not explicitly profess any purpose and because sometimes there is a mismatch between professed purpose and extant purpose.¹⁵ Call this *the identification problem*.

Second, institutions often have multiple extant purposes. This makes the relationship between the features of the institution and its legitimacy considerably more complicated on its own. But it also raises the possibility that multiple purposes may conflict.¹⁶ The UN, for example, is committed to both the promotion of peace and securing human rights. It structures its institutional norms, roles, and relations between them in order to better achieve its purposes. Yet some features that advance the prospects of peace undercut its ability to secure human rights. The fact that the United States and the Russian Federation each have a veto on the Security Council is important for ensuring their continued participation and so securing peace, but the veto allows each to protect themselves and their allies against UN action addressing human rights violations. Actual institutions often undertake a variety of tasks as a result of a variegated and complicated history and cannot be easily categorized in ways that lend themselves to straightforward evaluations of legitimacy. Call this *the multiple purposes problem*.

The multiple purposes problem and the identification problem interact. What we are mostly concerned with in the identification problem is identifying the constitutive purpose of the institution, the organizing principle that gives it shape. Part of the multiple purposes problem is that institutions might have multiple constitutive purposes. But many institutions also undertake purposes that are not constitutive of the institution. Here further complexities arise. Among the many extant purposes any institution might have, how do we distinguish constitutive from non-constitutive purposes? Under what circumstances does undertaking non-constitutive purposes matter for the legitimacy of an institution, which is mainly a matter of its constitutive purpose? A state may be made illegitimate if it undertakes any non-constitutive purposes, but other kinds of

institutions may not, with respect to some non-constitutive purposes but not others.

Third is *the contestation problem*. Institutional purpose, and the degree to which an institution is achieving its purpose, is often contested. Under some circumstances, particularly in the case of political institutions that have as their purpose the representation of all their subjects' interests, contestation is not only a descriptive feature of the institution but is also both ineliminable and desirable. One of the justifying purposes of such institutions is accounting for, and indeed enabling, disagreement and contestation over the shape and structure of the institution itself. But if purposes and their achievement are contested, it is unclear how legitimacy judgments can coordinate practical stances towards institutions in the way required for such judgments to play their distinctive practical role.

Finally, consider *the diachronicity problem*. Actual institutions change over time and their purposes can change as well. How do we identify the extant purpose of an institution when that very thing may be changing over time? Does the fact that an institution had some purpose in the past, and so was shaped by that purpose, matter for its legitimacy now, even if it has changed (e.g. the United States government and white supremacy)? Do we take into account the improvement of extant purpose over time? Do we take into account the possibility of reform in the future? These issues are especially important in light of the practical purpose of legitimacy judgments, which are supposed to coordinate our practical stance with respect to institutions. Our practical stance over time is made more complicated by changing institutional purpose.

One way to address these problems would be to articulate some sort of process by which we could, for example, force institutional participants to commit themselves to a particular purpose. Ultimately, however, while these problems complicate our judgments of legitimacy, I do not think they are problems that can be *solved*. The features of institutions that give rise to these problems are ineliminable: their historical nature, their persistence across time and responsiveness to changing contexts, their inclusion of a wide range of individuals under conditions of reasonable disagreement, and so on.

These problems also arise out of the tensions between various normative and evaluative standards that we need to use to analyze institutions and our relationships to them. Sometimes we are concerned with making new institutions, sometimes our relations to extant institutions, sometimes reforming institutions from the outside, sometimes from the inside. These concerns will weight various features of institutions differently as they consider the various goods and rights of institutions under various presentations. Legitimacy is relevant to all these questions in different ways, as are other modes of evaluation. Any "solution" to these problems will not be a matter of constructing an institution that avoids them

but of applying a more capacious and suitable theory of legitimacy to institutions as we find them.

V. Conclusion: A Way Forward?

Traditionally understood, legitimacy requires you to *actively contribute* towards the institution's purpose because obedience (and other weaker forms of support) makes you a part of the coordinated action that constitutes pursuit of the purpose. When that purpose becomes unclear for any of a variety of reasons, the idea that you have an obligation to contribute towards that purpose is called into question. A right to the obedience and support of others is rightfully viewed as very demanding, impinging on self-determination and individual autonomy as obedience and support do, so the purpose at which obedience and support are directed needs to be clear and weighty. On my more minimalist approach, according to which legitimacy just is the right to function and nothing more, the correlated uptake of legitimacy is non-interference rather than contribution. A claim against interference even when it is unclear what purpose one is undertaking is much more palatable than a claim to active contribution and support when the purpose is unclear.

Legitimacy, on my view, creates the space in our social practices for people to come together in organized groups and attempt to achieve certain goals and generate certain goods. We need such a space because the goals and goods of institutions are important and cannot be achieved otherwise; we need legitimacy to coordinate the normative boundaries of such a space because we disagree about what goods matter, to what degree they matter, and what (institutional) means are appropriate for pursuing them. This space is defined not by which institutions we should actively support but which we should not interfere with.

Creating a space in this way is not only amenable to conflicts and questions about institutional purpose; part of the point of such a space is precisely to enable experimenting that is necessarily tentative and unsure. Thus the facts that an institution might not have a clear purpose, might undertake a variety of purposes with conflicting dictums, or might change its purpose over time, are not intrinsically problematic. It is understood to be part of why we need and employ legitimacy discourse as a distinct sort of normative evaluation.

On my view, legitimacy judgments answer a very specific and very fundamental question: do we have to allow this institution to continue? We can coherently answer in the positive even when the problems of institutional purpose arise. Consider the identification problem. If we look at an institution, how it functions, the effects it has, and so on, we may not be able to glean its extant purpose. But this is not a fatal blow for its legitimacy on my view because it may

be entitled to non-interference. If the means it uses are not objectionable and if it has few (or no) negative effects, then the fact that we don't know what it's for is not necessarily problematic. But it is hard to see how this could be true when we understand legitimacy to correlate to duties of obedience and support. Parallel points can be made of the other problems: a more minimalist theory of legitimacy of the sort I prefer makes space for accounting for—and even encouraging—complications of institutional purpose, while theories that require active support encounter problems. All I can do here is gesture towards these arguments.

To conclude: institutional purpose matters for legitimacy in a variety of ways. Whether an institution undertakes a morally impermissible, merely permissible, or mandatory purpose matters because it changes the justificatory bar for the institution's right to function in complex ways. Generally speaking, institutions with impermissible purposes have the least normative leeway while institutions with a mandatory purpose have the most. This leeway sets the bar for how other features of the institution matter for its legitimacy: an institution with a mandatory purpose may be able to use harmful or otherwise impermissible means to achieve its purpose, for example.

Institutional purpose is also more complicated once we move beyond the state. For institutional types that are less well-defined and less entrenched in our actual world, we have more questions about purpose. An institution's purpose may change over time, it may be difficult to identify the actual purpose(s) of an institution, these purposes may be contested, and may even conflict. We are concerned with the legitimacy of actual institutional tokens because we want to know how we relate to the institutions that shape our lives. As such, institutional purpose has a variety of roles to play other than as a hypothetical justificatory purpose for an institutional type, the role it plays most prominently in theorizing the state. Due to this, it pays to directly theorize institutional purpose and how it matters for legitimacy as I have here. These considerations can then be combined with our theorizing of other institutional features and how they matter for legitimacy to come to a more plausible and general theory of legitimacy for institutions of all kinds, in every circumstance we encounter them.

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¹ See Erman (forthcoming) for a recent attempt to work some similar issues out in the context of particular political purposes.

² Many institutions also address rules to “outsiders” or non-members; political institutions are a prime example of this. However, my point here is to define the core of what it means to be an institution and institutions are defined by the rules that define institutional roles and regulate the activities of members. The next step is important for the subclass of institutions that claim to bind outsiders in a particular way, but not for institutions in general.

³ Normative standing is a set of Hohfeldian advantages and disadvantages (Hohfeld 1919).

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- ⁴ Thus it will not do to reduce an institution's purpose to a description of its actual functions. We need the purpose to describe the institution itself, but also to identify a mismatch between purpose and how it functions in practice, which may itself matter for legitimacy. Compare Buchanan and Keohane (2006, p. 422) on institutional integrity. Even further, we are often concerned with the prospects for reform when we consider an institution's legitimacy and having a purpose that may not be met but can be a guide for effective reform will matter as well. Thanks to an anonymous reviewer for pushing me to clarify this.
- ⁵ This can apply to sub-units; for example, on legislatures, see Waldron (2016, e.g. p. 154).
- ⁶ This example shows the contrast with the historical approach to individuating institutions. To my mind these distinct individuation criteria are simply useful in different contexts; neither captures the "real" institution.
- ⁷ The right to non-interference is the core of the right to function but depending on the nature of the institutions' functioning, this may well entail further normative advantages, as mentioned in Adams (2018). Thanks to an anonymous reviewer for pressing me to clarify this issue. The important point here is that legitimacy necessarily and minimally includes this element, and that is enough to consider how purpose matters for the stringency of the requirements we would put on an institution achieving this status. Note also that the correlative duty not to interfere is only the duty that correlates to legitimacy; members, outsiders, and others may all well be under a variety of other duties and in general relate to the institution in a variety of ways due to other factors.
- ⁸ All institutions depend on free acceptance by some core group of participants. Some institutions, most notably states, also coercively impose roles on people. This is a hugely complicating matter for the legitimacy of such institutions that *prima facie* defeats the positive case I just outlined.
- ⁹ Thanks to an anonymous reviewer for pressing me on this question.
- ¹⁰ This is (at least implicitly) considered throughout this special issue, including by Scherz and Zysset, Christiano, and especially Schmelzle.
- ¹¹ This is not to endorse a pure libertarian baseline for evaluating institutional legitimacy. For example, we may have good reasons for forbidding certain types of economic institutions because of the effects of allowing the type, despite the fact that any given token might be unobjectionable on its own.

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- ¹² For example, in January of 2017 the German Constitutional Court decided not to ban the neo-Nazi NPD party on the grounds that it was ineffective. Thanks to a reviewer for bringing this example to my attention.
- ¹³ This strategy is employed whether one thinks that ultimately the outcomes of the state matter most for its legitimacy or the process by which the state comes about (for example by consent) matters most. For even in the latter case, the question is why people would consent to the state *given* some understanding of what the state is for, especially because no plausible account relies on actual extant consent; theories of tacit and hypothetical consent need to reconstruct what counts as consent and what is being consented to. Thanks to an anonymous reviewer for pushing me to clarify this.
- ¹⁴ It may not even work in those cases (Sangiovanni 2013, p. 221).
- ¹⁵ Furthermore, even sincere statements of institutional purpose can have a variety of aims (Lang and Lopers-Sweetman 1991).
- ¹⁶ See Pavel, this issue, for consideration of the trade-offs between pursuing different goals in international law.