Taking Stances, Contesting Commitments

Political Legitimacy and the Pragmatic Turn[1]

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> To call something a legitimate authority is normally to imply that it ought to be obeyed.
>
> --Hanna Pitkin[1]

1. Introduction

"[E]very system of rule attempts to establish and to cultivate the belief in its legitimacy," Max Weber famously stated.[2] When confronted with authorities that make claims on us, set constraints on our behavior, impose obligations, or shape our lives and even our sense of self, we face a practical, political predicament: is the form of power with which we are confronted legitimate or illegitimate? The study of political legitimacy since Weber has exhibited a division of labor between political philosophy and social science.[3] The task-description

assigned to political philosophy, which I label 'normativism,' is to spell out and justify principles that determine what it is for political authority to *be* legitimate (*de jure*), in order to enable us to distinguish in practice, thereby resolving the political predicament. 'Descriptivist' social scientists, in contrast, abstract from the question of normative validity and examine the conditions under which authority is *taken to be* legitimate by subjects (*de facto*), as well as the empirical efficacy of their beliefs and attitudes for the operation of political institutions.[4] Within political philosophy more widely, the normativist task-description is highly contested. Alternate currents argue, in different ways, that political philosophy should orient itself toward political practice, and that a preoccupation with normative justification deflects attention away from real politics.[5] Meanwhile, critics of the Weberian conception of legitimacy in social science have argued that by abstracting from the question of normative validity descriptivists are unable to understand what is at stake in practices of legitimation.[6] These critiques of a strict division of labor on political legitimacy—urging, on the one hand, acknowledgement of the concept's normativity, and, on the other, philosophical attunement to political reality—need not be at odds. Yet, to my mind, so far there has not been a convincing systematic attempt to rethink the concept of political legitimacy in a way that accommodates both concerns.[7]

My aim in this essay is not refute the traditional understandings of political legitimacy and the associated division of labor, but rather to present a contrasting perspective. To constitute a genuine alternative, such an approach should satisfy at least two conditions. First, it should be able to articulate the distinction between what *is* legitimate (*de jure*) and what is *merely taken to be* legitimate (*de facto*), avoiding a pure descriptivism that collapses the former into the latter and thereby renders unintelligible the predicament subjects face when confronted with authorities. Secondly, it should do so without committing us from the start to the normativist

task of philosophically securing this distinction by justifying a set of moral principles and criteria.

We can achieve this (I hope to show) by approaching the concept in first instance from the perspective of the philosophy of language and political ontology, rather than moral theory. The key is to take a shift in our direction of enquiry—a *pragmatic turn*. I propose we take a step back and switch focus from the question 'under what conditions is political authority legitimate?', which takes center stage in normativist approaches, to the question 'what is it we *do* in calling political authority legitimate or illegitimate?' We start from the observation that the notion of legitimacy is deployed and disputed in political practice, and focus in first instance not on what we *say* when we claim that authority is legitimate or illegitimate—on the *content* of legitimacy-claims—but on what we *do* in claiming it—on their *use*. On the view I develop here, the concept of legitimacy has its political point and purpose in the context of relations of rule, in which subjects are confronted by, attune themselves to, and potentially contest political authority. Politics is conceived as the practice of *stance-taking* between subjects and authorities. This enables us to interpret the practical role of 'legitimacy' as *expressive*: to call an authority legitimate or illegitimate is to make one's political stance explicit, which makes it possible to dispute stances with others. In this light, we can reinterpret the distinction between what *is* legitimate (*de jure*) and what is merely *taken to be so* (*de facto*) in terms of the differences of social perspective between practically engaged participants, rather than in terms of the relation of reference between legitimacy-claims and a specific set of moral principles. The distinction is essentially drawn from a participant's perspective, and reflects a tension inherent in political engagement. In this sense, what is presented here is a *performative* interpretation of the distinction between *de facto* and *de jure* legitimacy.

The importance of conceptualizing political legitimacy in these pragmatic terms is that it casts the predicament that subjects face when confronted by authorities as calling for ongoing practical engagement, rather than a theoretical solution. The upshot for political philosophy is to shift our theoretical imagination from the formulation and justification of a set of moral principles and criteria of legitimacy to the task of making explicit how the predicament presents itself and engages us. From this perspective, the problem with normativist conceptions of political legitimacy is that they treat political judgment as a matter of applying a particular form of moral knowledge, while obscuring from view the various modes of attunement to political reality that political situations call for.

2. A political predicament—and one way of taking it up philosophically

Let me give an initial sense of the kind of political predicament that is at stake here with an historical example of a critical moment in which, at least for many of those involved, the question of legitimacy became a lived, practical predicament: the confrontation between the establishment of the West German *Bundesrepublik* (Federal Republic) and a multifarious movement referred to as "the Left," which reached its height at the end of the 1960s. Perceiving the political establishment as implicated in global imperialism, impervious to demands for greater justice and impenetrable by means of conventional party-politics, many in the radical left turned to extra-parliamentary forms of protest.[8] For a small fraction, of which the Red Army Faction (RAF) was the most prominent exponent, this included violent action. From the 1970s until the early 1990s, the RAF carried out a series of attacks against officials associated with the West German government, as well as prominent representatives of the business establishment and United States forces stationed there. Through its

declarations and actions (including bank raids, bombings and kidnappings), the RAF challenged the legitimacy of the *Bundesrepublik*, which they took to be an arm of a global imperialist system—a perception that was widespread among the radical left. The government perceived this challenge as an existential threat to the republic as a parliamentary democracy and deployed its police force, secret service, and military to seek out and imprison RAF members. Initially, it succeeded in this aim, capturing the core Baader-Meinhof group in 1972. Yet rather than putting an end to political violence, their imprisonment turned out to be one moment in a complex dynamic of action and reaction between the government and the radical left. Tensions reached their zenith during what came to be known as the German Autumn of 1977, when a new generation of RAF members kidnapped a prominent businessman and Palestinians allied to them hijacked an airplane in an unsuccessful attempt to force the government to free their founders, leading to an unprecedented search-and-rescue operation by the government.

Questions and concerns raised by the situation dominated public debate in West Germany. Issues of contention involved, among other things, the supposedly inhumane treatment of the "terrorists" or "political prisoners," the extension of police prerogatives and reduction of legal protections, the banning of citizens with radical political ideas from public service, and the propriety of violence as a means of political action. These matters had ramifications for anyone involved, whether as a "government official," a member of the "resistance movement," a left-wing "sympathizer" called upon to harbor comrades who had gone underground, or a "loyal citizen" keeping an eye out for suspicious activity—forcing them, implicitly or explicitly, to take a stance, and prompting them to articulate or rethink their responsibilities. Part of what makes this such an interesting situation for present purposes is the range of stances people took and the spectrum of courses of action they deemed appropriate. Some on the left, for instance, agreed with the RAF's rejection of the

Bundesrepublik but opposed their violent response. And some of those who accepted the political order became disaffected with the government in light of its heavy-handed response.

To be clear, my aim is not to adjudicate among these stances, but to provide an illustrative example that will help in articulating the otherwise rather abstract conceptual framework that follows. This episode in recent history, I want to suggest, is an exceptionally vivid instance of an important political experience—a predicament that may arise, for instance, when one is confronted with a fraudulent election outcome, a controversial emergency law, or an aggressive foreign policy. When confronted by rule we face the predicament: How can we discriminate between political authority that is legitimate, and political authority that isn't— even though it might appear and claim to be so? Putting the issue in these terms presupposes an intuitive grasp of the question of legitimacy—that this question makes sense to us. This presupposition is rooted in the assumption that this is a familiar political experience, that distinguishing between legitimate and illegitimate authorities is something we do in practice (if often implicitly). This serves well as a phenomenological point of departure. But how should we understand what is at stake in this political predicament? What is it we *do* in asking whether political authority is legitimate, or merely purports to be so? And how can we address this question?

Usually, philosophical theories of political legitimacy take these questions to have a straightforward answer: since political legitimacy is the "right to rule," to raise the question of whether political authority is really legitimate or merely purports to be so, is to ask whether it satisfies the necessary and sufficient conditions for it to have this right.[9] The difficult philosophical issue is to specify what those conditions are. On this framing of the problem, which I call 'normativism', the main task for political philosophy (concerning legitimacy) is to formulate and justify principles and criteria that specify those conditions, a kind of knowledge that can subsequently be applied in actual situations in which the

legitimacy of political authority is questioned. When we have an account of what it is for a political authority to really *be* legitimate—say, to be morally justified or have the right to rule—we also know what we are doing when we say that it is legitimate and, more importantly, we can determine whether a claim to legitimacy is correct with reference to these principles. So, according to certain prominent theories, assessing the legitimacy of the *Bundesrepublik* would have been a matter of determining whether it could achieve the unanimous assent of reasonable subjects;[10] whether its subjects had actually expressed consent to its rule;[11] or whether it ruled according to certain democratic procedures.[12] Typically (but not always), the issue is cast in a moral register, rendering, in Bernard Williams' apt phrase, "morality prior to politics."[13] As Thomas Nagel poses the question, for instance: "Legitimacy implies that there is no moral justification for disrupting or subverting the system," so "[t]he question is, what supplies the standard of reasonable, morally permissible rejection which provides the true test of the legitimacy of a system, as opposed to rejection based only on superior leverage and unmodified self-interest?"[14] The political predicament is one for philosophy to resolve, at least in theory, though of course there is always the difficult task of practical application.

Normativism is a predominant way of thinking about legitimacy in political philosophy, and it is easy to see why this approach has such wide appeal: it promises to resolve the political predicament by giving subjects a secure standard, a kind of knowledge unencumbered by the relations of power that we seek to assess, which provides critical leverage against the concrete authorities we face. It helps us to speak truth to power. Indeed, this seems to many philosophers almost self-evident that this form of knowledge—a set of moral principles and criteria—is just what we ask for when we raise a question of legitimacy. But it is important to realize that it directs our attention in a specific direction: toward moral theory, or more precisely, toward a kind of normative theorizing aimed at philosophical

justification. And it thereby treats political judgment—distinguishing in practice between what is legitimate and what is merely taken to be so—as a matter of applying the moral knowledge generated by political philosophy. But does this way of framing political legitimacy really capture what is at stake in political judgment? And in drawing our attention to moral theory, what does this type of approach draw our attention *away* from?

We can only begin to address these questions when we see that normativist approaches to legitimacy frame the predicament in a particular way—looking at it, as it were, through one set of glasses, which we might exchange for a different pair. As long as we think of the distinction between what is legitimate and what is merely taken to be so in terms of reference to a distinct set of principles or criteria, our theoretical focus will remain strictly on normative justification.[15] My aim here is not to refute this line of thinking, but rather to present an alternative perspective, and to begin to explore where it directs our attention. For purposes of this paper, I want to bracket the question of what makes a political authority legitimate; this study will not provide direct answers to questions of whether and why authority in certain circumstances is legitimate or illegitimate. But there is a reason for leaving this open: the picture of political legitimacy that I put forward casts the political predicament as calling for various forms of practical engagement, rather than a theoretical solution.

3. The pragmatic turn

The pragmatist order of explanation pursued here starts by asking what one *does* in *taking* authority to be legitimate, rather than what it means for authority to *be* legitimate. The challenge is then to explicate the distinction between what *is* legitimate and what is *merely taken to be so* on this basis. What is (perhaps) counterintuitive about this approach is the idea

that we can say something about the use of legitimacy-claims without providing an antecedent account of their meaning. The question what it is to take something to be something may not seem to get at the heart of the question what something *is*, or may not even seem to address the question at all. Switching the question in the way I propose only makes sense if we assume something important about language: that we take the meaning of concepts to be determined by their practical role, rather than by what they refer to. This is arguably the central idea of a "pragmatic turn" in philosophy.[16] Pragmatist approaches to language try to explain the correctness or incorrectness of applications of concepts (what words really mean) in first instance in terms of their use (how they are treated by those who deploy them), rather than in terms of their relation of reference to objects or ideas.[17] The approach I take in what follows is particularly indebted to the social-pragmatic philosophy of language developed by Robert Brandom, which is arguably the most systematic theory of meaning in terms of use, and which makes available what he might call the "expressive resources" for a pragmatic turn in thinking about political legitimacy.[18] I cannot consider his theory in detail, but a few remarks are in order to explain what is distinctive about the conceptualization of political legitimacy proposed here.[19]

For present purposes, attending to Brandom's maxim that "semantics must answer to pragmatics" implies that an adequate conception of political legitimacy should be able to make sense of the *practice of disputing legitimacy* (the explicit use of the concept).[20] The question what it is we do in explicitly asserting that political authority is legitimate (or not) is intimately connected with the question what it is to implicitly take it to be legitimate, though it is important to distinguish them clearly. An assumption I adopt from Brandom helps us to explicate the former (explicitly claiming legitimacy) in terms of the latter (implicitly taking-to-be-legitimate). The crucial idea is that we can explain normative concepts as making explicit implicit proprieties of practice. For Brandom, social practices are implicitly

normative in the sense that they consist in ongoing engagement between participants who mutually hold each other responsible, treating performances as appropriate or inappropriate. As what Brandom calls "deontic scorekeepers," participants in social practice keep track of the commitments (and entitlements to those commitments) that they attribute to others as well as themselves.[21] From each participant's perspective, the significance of a performance is assessed against the repertoire of further commitments that the scorekeeper is willing to acknowledge, on the one hand, and against those she attributes to the performer, on the other. By keeping "multiple sets of books," subjects account for the different ways in which the significance of a performance is assessed from different perspectives.[22] Much of this mutually holding to account remains implicit and is embodied in social practices in the widest sense; in habits, institutions, ways of speaking, etc. But commitments and entitlements can be explicitly disputed through discursive practice—the game of giving and asking for reasons.

The crucial point is that Brandom attributes explanatory primacy to these implicit proprieties of practice: although normative statuses can often be made explicit and disputed in the form of rules or principles, they cannot be explained with reference to such explicit norms, but should be understood in first instance as *implicit* in practice, or more specifically, in the performances and practical attitudes, or *stances*, of participants.[23] By conceiving normative statuses as essentially perspectival and brought into play in social practices, Brandom situates them in an ongoing process of stance-taking, in which they can be disputed and negotiated. To be committed is to be held to be committed; it is a matter of first- and second-personal *holding* to account, rather than a third-personal state of affairs. What one is really committed to, and whether one is entitled to one's commitments, is determined from a multiplicity of perspectives in an ongoing open-ended process of action and response.

The pragmatic turn in conceptualizing political legitimacy that Brandom's theoretical framework enables us to take provides two methodological innovations, which set this

approach apart from normativist approaches. The first is to explain what is distinctly *political* about political legitimacy in terms of a kind of practical situation. Theorists who take a normativist approach typically define political legitimacy in terms of an object of evaluation, that is, by reference to the kind of thing we are calling legitimate or illegitimate. Thus, political legitimacy is said to refer to the legitimacy of 'the state', 'the political system', 'government', 'law', etc. This methodological strategy specifies what is political about political legitimacy in terms of what an assertion of 'legitimacy' is *about*. One problem with this way of demarcating the political is that it leaves an important question out of view. The nature of the object of evaluation of claims to legitimacy is itself at stake in a political situation (more on this point below). A pragmatist direction of enquiry suggests instead that we explicate what is political about political legitimacy in terms of the kind of social practice in which the concept of legitimacy is used, that is, in terms of *where and how they occur*— their practical context.[24] The idea is that certain modes of social interaction have something in common such that we can speak of 'political' ways of acting and 'political' relations. Section four develops a theoretical vocabulary to describe this type of practical context.

The second crucial move is to understand the concept of 'legitimacy' in terms of the pragmatic role it plays within this type of situation—what one *does* in deploying it (section five). In line with Brandom's theory of meaning, this is to be explained in terms of the practical attitudes or stances that participants implicitly or explicitly take in political practice. In short, the aim of the following sections is to develop a 'political pragmatics of legitimacy': a theory that explicates the *use* of 'legitimacy', rooted in an account of the social practice in which the concept has a distinctly *political* point and purpose.

4. Politics as stance-taking between subjects and authorities

The central challenge for a pragmatic approach to the concept of political legitimacy is to explain the significance of a legitimacy-claim made by (or on behalf of) authorities in terms of the dynamics of political practice, without appealing to a prior understanding of what 'legitimacy' means. In the philosophical literature, one can observe a rough distinction between two ideal-typical conceptions of the political: an institutional and an interactional conception. On the one hand, politics is often conceived as the operation of a set of governing institutions, typically associated with the state. Such institutions are supposed to provide society with a sense of unity, order, and stability by regulating and facilitating the interactions of individuals.[25] On the other hand, and often in contrast to this, politics is conceived as a mode of social interaction, characterized by power-relations, plurality, deliberation, and contestation.[26] The conception of politics as *stance-taking between subjects and authorities* that I propose is sensitive to the dangers of one-sided characterizations of politics and therefore combines both dimensions, locating the political precisely at the nexus of order and conflict.[27]

Taking my cue from Weber, I suggest that the kind of practical situation in which 'legitimacy' has a distinctly political significance revolves around the *attempt to rule*. The idea (as mentioned above) is that the predicament someone faces when confronted by rule constitutes a basic political experience, which can serve as our phenomenological starting point. From the perspective of a political subject, rule appears as an exercise of power, seeking to guide one's action or shape one's practical horizon. The term 'subject' here has the double sense of someone who has a first-person perspective in relation to a form of power, and someone who is faced by an authority that subjects him or her.[28]

Consider two ways in which subjects can be confronted with power. First, power can be exercised over subjects by prescribing or prohibiting courses of action; for instance, a state that issues laws backed by sanctions. Second, power can be exercised less directly by shaping subjects' available courses of action in advance; for instance by contributing to the constitution of their sense of identity or by affecting the material conditions of their agency. For example, by giving political subjects the status of citizens and the right to vote, authorities open up legally constituted courses of political action and foreclose others; by taxing and redistributing capital they allocate economic resources which in turn affect available courses of political action; and by letting subjects undergo certain forms of education they inculcate certain conventions rather than others.[29] Not all forms of power that shape the practical horizon of subjects appear as an 'authority' in this sense; sometimes power operates subliminally and anonymously behind their backs, through diffuse networks or practices.[30] Insofar as subjects *see* it *as* affecting their practical horizon—that is, insofar as they adopt a first-person perspective toward it—a form of power counts as 'political authority' that 'attempts to rule' (from that perspective) in my broad use of these terms.

One advantage of this rather abstract conceptualization is that it does not commit us in advance to a particular way of *representing* political authority, and thereby enables us to acknowledge the historical and contested character of such representations and the forms of power they represent. In both theory and practice, the workings of power can be brought to light, interpreted, and represented in different ways, and the coercive power of the state is just one form that rule might take. This comes out clearly in the confrontation between the Left and the *Bundesrepublik*. Did subjects face a "constitutional state," or a "military-industrial complex"? Are we today confronted, for instance, by a "government," "multi-level networks of governance" or "disciplinary practices"?[31] In the final section, I will briefly reflect on the significance of such representations of authority for political judgment.

Recall that, according to Brandom's pragmatism, social practice is a matter of ongoing engagement between participants who mutually hold one another to account. In line with this, we can understand the attempt to rule as central to a particular form of social practice, namely the practice of *stance-taking between subjects and authorities*. From the perspective of a subject, an attempt to rule constitutes a practical context in which she can take different stances. While authorities may attempt to rule her, they cannot fully determine how the subject responds to this—whether she treats it as a guide to action or an imposition. This holds for both forms of rule distinguished above. Where authority issues prescriptions or prohibitions, making explicit claims on subjects, a subject is forced to *do* something—to comply with or resist or ignore it. Similarly, where authority operates by constituting the subject's practical horizon indirectly, she can endorse the ways in which she is being shaped by power, or try to resist, reshape, or escape them. The notion of a 'stance' should be understood here with respect to a basic sense of *propriety* that is (implicitly or explicitly) involved in these relations. In purporting to rule, authority takes a particular kind of practical attitude toward its subjects: from its perspective, it is appropriate for subjects to comply (where power takes the form of explicit demands on action), or to endorse rather than subvert the power exercised over them (where it works to constitute their practical horizon).[32] This stance is typically expressed in *treating* them as responsible in various ways, for instance, by sanctioning non-compliance and resistance. In response to being taken and treated as responsible, subjects can take two basic stances: *recognizing* its claim as normative by treating oneself as responsible, or *rejecting* it by treating it as an imposition. While they are typically exhibited in action, such political stances cannot be reduced to actual, observed behavior. Subjects may fail to live up to their commitments, or disagree about their implications. For instance, a stance of rejection may in a particular situation imply for someone that it is appropriate to resist, or flee, or reluctantly comply. And recognizing rule as

normative does not entail that one conforms all actions to the demands of authority, but that one takes it to be appropriate to conform one's actions to the demands of authority, and in that sense holds oneself responsible for compliance.

In Brandomian terms, taking a political stance is a matter of undertaking and attributing a particular pattern of commitments and entitlements. Authorities attribute commitments to obey or uphold their rule to their subjects. Subjects, in turn, attribute or withhold an entitlement to rule to authorities, undertake a commitment to treat it ways appropriate to its status, and attribute such a commitment to fellow subjects. What such political commitments involve exactly depends on the specifics of the situation, but minimally it seems that recognizing authority as normative involves undertaking a commitment to comply with its demands or restrictions, or to endorse rather than to subvert the ways in which it shapes one's sense of self and frames available courses of action—in short, to treat authority as a source of reasons.[33]

This theoretical framework is deliberately abstract. The conception of politics as stance-taking toward rule is not meant to exhaust the meaning of the political, but as an interpretation of the basic form of social practice in which legitimacy has a distinctly political sense.[34] The complex dynamic between the RAF, the broader Left, the West German authorities, the media, and the general public can be understood in part as a practice of stance-taking between subjects and authorities in this sense. The government of the *Bundesrepublik* attempted to rule, partly by imposing constraints on permissible action. Many of its subjects took it to be entitled to do so, and considered themselves responsible, for example, to comply with its anti-terrorist measures. The members of the RAF explicitly and violently rejected the authority that confronted them. Others in the broader movement from which the RAF arose similarly refused to recognize the *Bundesrepublik*'s authority as normative, but committed to non-violent forms of protest. This shows that subjects can take

stances with the same modality (recognition or rejection) while disagreeing about the attendant responsibilities they thereby undertake (for instance, whether or not it is appropriate to take up arms). So while the basic political stances of recognition and rejection are dichotomous (one either attributes an entitlement to rule or withholds it), there is still a broad spectrum of different ways of relating to authority, according to the different attendant commitments that subjects can be taken to have.

This example also makes clear that in practice any instance of political stance-taking toward rule is interwoven with other forms of social practice. It can be isolated only analytically from other practices and the habits, vocabularies, and institutions involved—for instance, legislation, administration, jurisprudence, policing, education, public communication, social science, economic exchange, war, etc. This wider constellation of meaning has implications for what it means to recognize or reject political authority in a particular case. What stance one takes may have consequences, for instance, for whether one will be prosecuted for one's beliefs, whether one should join a resistance movement or report suspicious activities of one's neighbors to the authorities, whether one can keep one's job as a teacher, whether one's children will be able to go to school, whether one will receive retirement benefits, etc.

Clearly, who was entitled to what stance toward the authorities, and what sorts of attendant political responsibilities subjects had (in other words, what courses of action were appropriate), was highly contested in this context. What it means to recognize or reject authority, and what makes it appropriate to do so, is understood in very different ways in different circumstances and according to different subjects.

5. Disputing commitments: the pragmatics of 'legitimacy'

What role can the concept of legitimacy play in this type of practice? What is it to call authority 'legitimate' in a context of stance-taking between subjects and authorities? I propose that, in line with Brandom's social-pragmatic theory of meaning, we can interpret the role of 'legitimacy' as *expressive*. The basic idea is that this conception of politics gives us an account of what it is to implicitly *take* political authority to be legitimate, which in turn helps us to articulate what it is to explicitly *call* political authority legitimate. In Brandomian terms, the practice of disputing legitimacy enables subjects to *explicitly* attribute (to themselves and others) the commitments and entitlements that they otherwise *implicitly* attribute in treating authorities one way or another. Calling political authority legitimate (or illegitimate) is a way of making one's political stance explicit. Doing so makes it possible to dispute these stances and their implications by giving and asking for reasons.

On this view, the point of political speech and action is to alter the patterns of commitments and entitlements subjects and authorities attribute to one another, convincing others to shift their stances and rethink their responsibilities. If subjects are to treat an authority as normative, it must at the very least act in such a way that the subject can take it to be genuinely committed to rule, by presenting itself as entitled to compliance and treating subjects as committed to comply. This is the point of a legitimacy-claim made by (or on behalf of) authorities. Suppose a subject takes this claim to legitimacy to be sincere, while refusing to recognize it as normative—attributing a commitment to rule, while withholding an entitlement to that commitment. It can then (in certain circumstances) make sense for her to make that stance explicit by asserting that the authority is illegitimate and taking appropriate action (protest, for instance), thereby soliciting further action on the part of the authority to redeem its claim or change its ways. In this sense, to make a legitimacy-claim is

to *do* something. To express one's stance is to produce a performance in the interplay between subject and authority, which potentially affects the score they keep of one another. Similarly, among subjects, claiming that an authority is legitimate or illegitimate can affect the stances of others, who may come to understand themselves differently in their relation to political authority in light of a speaker's assertion. Whether they do so depends on how the act is taken up with respect to each participant's repertoire of background commitments. Of course, since authorities tend to have other means at their disposal besides justifying themselves discursively or changing their ways, and since their claim to legitimacy can be disingenuous or farcical, making one's stance of rejection explicit toward that authority often carries significant risk.

When political stances are contested, rather than remaining implicitly presupposed, we can speak of a *critical moment*. Such a moment is critical in a double sense, as Boltanski and Thévenot aptly put it, referring both "to the critical activity of the persons and to the unusualness of a moment of crisis."[35] In the case of political relations, a critical moment is unusual or exceptional with respect to an authority's expectation of compliance; from the perspective of authority's attempt to rule, contestation of its entitlement to do so constitutes a "break in the course of action."[36] From the perspective of a subject who challenges that entitlement, it is exceptional in the sense that an illegitimate attempt to rule constitutes an imposition. It is worth noting that whether a situation constitutes a critical moment can be assessed differently from different perspectives. What may from one perspective be a situation in which political stances are fundamentally at stake, may from another have little political significance. Some government officials and citizens saw the RAF's political violence as a form of criminality rather than political action. For others (even some of those outside the radical left who did not perceive the rule of the *Bundesrepublik* as problematic in

first instance) the government's heavy-handed response put their stance at stake, prompting them to reconsider their political commitments.

One way of dealing with the critical moment that arises when authority's entitlement to rule is contested is to engage in a dispute. But, as the confrontation between the West German government and the radical left brings out, explicit disputes are not the only way in which critical moments can manifest themselves. Stance-taking cannot be reduced to conversation. The critical activity of political subjects can find expression not only in words, but also in deeds—public ridicule or implicit parody of authorities, erection or desecration of public symbols, gathering and marching in protest, acts of violence, etc. Like many others in the Left, the RAF saw the *Bundesrepublik*'s explicit commitment to democracy and the rule of law as masking its true nature as a fascist police state. Because the RAF regarded the state's claim to legitimacy as disingenuous, they saw little point in discursively engaging it. Nor did they believe their actions would lead directly to the overthrow of the system. The self-declared point of the RAF's actions (at least initially) was rather to shift the stances of other subjects in relation to the *Bundesrepublik* by changing their perception of it, subverting their self-understanding as democratic citizens, with bombs that would "detonate also in the consciousness of the masses."[37] This suggests that non-linguistic political actions, including acts of violence, do (or attempt to do) implicitly what discursive assertions of legitimacy do explicitly, namely to affect the stances of subjects and authorities. So disputing legitimacy is one specific form of political contestation, broadly conceived.

What must one do in order to count as disputing legitimacy, rather than doing something else? And what distinguishes disputing legitimacy from other modes of political contestation? A fruitful way to approach this is to ask what it would be to count as mistaken about one's claim of (il)legitimacy. How should 'legitimacy' be used in order to be taken by others as an expression of recognition of authority or 'illegitimacy' as a rejection of it? There are several

things to say here. A minimal condition for successfully articulating a stance appears to be that one's assertion must be comprehensible to others as making a stance explicit. One's assertion must be such that it entitles others to attribute a commitment to the speaker to recognize or reject political authority as normative. You aren't articulating or disputing a stance if you aren't to some extent perceived as doing so. Furthermore, if one's claim is successful in the sense that others take one to adopt a particular stance, one's assertion of legitimacy can be mistaken (according to a listener) if one cannot provide a satisfactory answer to the question "why?"; that is, if one proves incapable of giving a good reason for one's claim. A good reason (from the perspective of the listener) is just something that entitles the speaker to a claim of legitimacy, in light of a wider repertoire of commitments. Consider three ways in which, it seems, a listener can intelligibly take a speaker to be mistaken about this, and (thereby) withhold entitlement to his commitment. First, a listener may take the speaker to misapprehend political authority—by mistaking, say, a fraudulent government for a genuinely elected one, or a military-industrial complex for a constitutional state. Second, the listener may disagree about whether the adduced consideration counts in the present situation as a good reason for a particular political stance; for example, if speaker and listener agree that the election was not fraudulent but disagree whether that election would entitle this government to rule in the first place. And third, one can also take someone to be mistaken with respect to *who* he holds to be responsible to that political authority, that is, who he counts as an addressee of its rule.[38] To treat others as committed to recognize an authority is to treat them as members of a political community, in the minimal sense of being subject and responsible to the same political authority.

In the first case, the failure (from the listener's point of view) is due to a mismatch between what the authority is taken to be and what it actually is (according to the listener); in the second, between what speaker and listener take to count as good reasons in the present

situation; and, in the third, between *who* is held to be a fellow subject to authority. This suggests that taking a political stance involves at least (a) undertaking a commitment to represent the political authority one faces in a certain way (as a democratic government, benevolent dictatorship, military-industrial complex, etc.); (b) attributing or withholding an entitlement to rule, and thereby undertaking a commitment to treat it in ways appropriate to its status; and (c) attributing similar commitments to certain others (i.e. those one counts as fellow members of the political community). I don't mean that in taking a stance one must have all this in mind, so to speak, but that undertaking and attributing such commitments and entitlements is what one does (implicitly) in taking a stance. Stance-taking is a matter of relating to authority and to concrete others, taking and treating them in certain ways rather than others. Disputing legitimacy is making these ways of relating to authority and to one another explicit and putting them at stake in a game of giving and asking for reasons.

6. Legitimacy de jure *and* de facto

So far, I've argued that the point of the concept of legitimacy (and functional equivalents) in a political context is to make political stances explicit, thereby offering a way of dealing with a critical moment by giving and asking for reasons. Still, someone might grant all this about the political pragmatics of legitimacy, while denying that this helps us say anything about what is really legitimate, insisting on the need to distinguish *de jure* from *de facto* legitimacy: to distinguish what *is* legitimate from what is *taken* to be so. This account may express what goes on when political subjects recognize or reject political authority, but it does not address whether and under what conditions they *ought* to do so. It may seem that in order to determine the propriety of political stances we still need a normativist theory of legitimacy

that gives us a set of principles and criteria. This line of thinking, however, presumes that the propriety of political stances should be understood with reference to a kind of explicit moral knowledge. As I'll try to show, however, recasting the predicament in a pragmatic way enables us to frame political judgment as an ongoing task that calls for practical engagement, rather than a philosophical problem calling for a general solution. I will proceed in two steps. Drawing again on Brandom, the present section aims to show how the distinction between *de facto* and *de jure* legitimacy can be understood without reference to a distinct form of moral knowledge (general principles and criteria of legitimacy). The next (and final) section will begin to explore what it means to see political judgment as a situated practical activity, drawing attention to the conditions in which this appears as a lived, practical predicament.

The key to understanding what legitimacy *is* in terms of what it is to *take* something to be legitimate is to account for the distinction between *de facto* and *de jure* legitimacy in terms of the situated perspectives of participants engaged in political practice. The basic idea is that this distinction is essentially drawn from an engaged, first-person perspective and reflects a tension that emerges from the perspectival structure of political practice. Briefly put, for political authority to be legitimate (according to someone) is for it to be appropriate to take it to be legitimate (from that perspective). Only from an engaged standpoint, in virtue of subjects taking stances from different perspectives, is there such a thing as political legitimacy at all.

To flesh out what this means, it is helpful to consider two alternative ways in which this idea of normativity as implicit in political practice might be construed, which contrast with the socio-perspectival account presently pursued. First, the claim that the distinction between the *de facto* and *de jure* senses of legitimacy should be understood as rendered from an engaged practical perspective might be understood as meaning that legitimacy is merely subjective. The idea would be that from any perspective, what is legitimate is simply what is

taken to be legitimate from that perspective. To conceive legitimacy as merely subjective is a trap: it collapses the distinction (from a participant's perspective) between something being taken to be legitimate and something actually being legitimate, and hence the possibility of being mistaken. While there is (on the present approach) no sovereign perspective from which a stance can be qualified as appropriate or inappropriate, this does not make stance-taking arbitrary; from the perspective of any participant, stances (including one's own) are liable to evaluation, and participants can be held responsible for them.

The attempt to avoid the trap of subjectivism can lead into a second one. If the validity of an assessment of political legitimacy is not merely subjective, and yet somehow implicit in practice, then whom is it up to? Another answer might be that whether a political stance is appropriate or not is not up to the individual, but to the community as a whole, as represented by a set of collectively accepted principles. Any particular subject can then be understood to be correct or mistaken with reference to those norms. This suggestion responds to the idea that one can have commitments that one fails to acknowledge. One can be held responsible by others, and thereby bound in some sense by the norms they acknowledge. But just as subjectivism negates the possibility of a subject's being mistaken, the move to communal norms denies the possibility that the community is mistaken, as well as invoking a reified conception of the community as a whole.[39] So the challenge is to make intelligible, on the one hand, the fact that one cannot understand the reasons one provides and the commitments one acknowledges as binding at will or purely in isolation, because their validity depends also on their uptake by others, and on the other hand the fact that one can hold others to be mistaken, even collectively.

This is where Brandom's account of normativity is particularly useful. Rather than collapsing what is legitimate into what is merely taken to be so (whether by an individual or by a community), we can understand this distinction as articulating a basic tension between

the commitments one happens to acknowledge (that is, attributes to oneself), and those one actually undertakes.[40] As we've seen, for Brandom, engaging in social practice involves mutually holding one another to account by attributing commitments (and entitlements to those commitments), which can be disputed in a game of giving and asking for reasons. Whether one ought to undertake a commitment to something is assessed in light of its compatibility with a wider repertoire of commitments. Each participant keeps track of what others take themselves to be committed to in speaking and acting, and what they, from her own perspective, are actually committed to (in light of her own repertoire of background commitments). What anyone is genuinely committed to is assessed differently from different perspectives. Engaging in discursive practice involves rendering some of one's acknowledged commitments criticizable, which implies a responsibility to provide reasons when challenged, and to revise one's repertoire if better reasons are put forward. There is always the possibility that some commitments one acknowledges (attributes to oneself) will turn out to be inappropriate, even in one's own eyes. As Brandom puts it, the commitments one actually undertakes always "outrun" those one acknowledges.[41]

The possibility of being mistaken can therefore be understood, in first instance, in terms of the differences of social perspective between participants, namely as discrepancy between commitments others take themselves to undertake, and those they actually undertake (from the perspective of some "scorekeeper"). Yet because practical engagement among others introduces a moment of reflexivity, the possibility of being mistaken arises with respect to one's own commitments as well. It presents any subject with the ongoing challenge of determining what she is really committed to, in relation to the concrete others she encounters. In engaging in discursive practice, therefore, each participant implicitly distinguishes between the commitments she (or anyone else) acknowledges and whichever commitments it would be *appropriate* to undertake. In other words, practical engagement among a plurality

of perspectives brings into play a structural tension, inherent in a first-person perspective, between acknowledged and actually undertaken commitments. This tension can be practically negotiated in ongoing action and response with others, but not definitively resolved.

How can this socio-perspectival understanding of normativity help to make sense of the distinction between legitimacy *de jure* and *de facto*? On this view, the distinction between what is legitimate and what is merely taken to be so can be seen as just a specific case of this basic tension between the commitments one acknowledges, and those one actually undertakes. Taking political stances to be appropriate or inappropriate involves drawing a distinction between, on the one hand, how others represent an authority; what they count as good reasons for treating it as entitled to rule; and who they count as its addressees, and on the other hand what one oneself takes to be an adequate representation of that authority; what reasons one takes to actually count as good in the present case; and who counts as a subject to that political authority. Moreover, since mutually holding and being held to account also involves a reflexive relation to one's own acknowledged commitments, it brings into play a tension between the commitments with which one happens to find oneself, and whichever ones one ought to acknowledge. In this sense, the distinction between what is legitimate and what is merely taken to be so is interpreted as *performative*, understood not as a kind of 'making,' where the performance is a delimited occurrence leaving behind a finished product, but as situated in ongoing activity.[42]

Distinguishing between the different perspectives from which commitments and entitlements are attributed is a crucial ability for subjects who engage in political contestation and need to assess the significance and implications of words and deeds. One might want to say, for instance, that a political authority is illegitimate, even if all others subject to it take it to be legitimate; or, alternatively, that an authority is legitimate, even if most of its subjects do not recognize it as such (supposing one does not count a general lack of recognition as a

reason for rejecting it). Here *de facto* and *de jure* can be used to indicate the perspective from which authority is recognized or rejected. On this proposal, to say that an authority is legitimate *de facto* but not *de jure* is just to say that others take or treat it as legitimate, while it is not (from one's own perspective); articulating, in other words, that the relation between other subjects and authority is one of mutual recognition, while expressing one's own stance of rejection. This is to interpret those others as taking a political stance to which they are not entitled (in light of the actual understanding of the situation, according to the scorekeeper). Similarly, one might want to say that an authority is illegitimate with respect to certain subjects both *de facto*, in the sense that they reject it, and *de jure*, in the sense that their stance is appropriate (from one's own perspective). In this way, the *de facto* and *de jure* senses of legitimacy are just a means of distinguishing between the different patterns of attributions of commitments and entitlements involved here, which yields an expressive vocabulary for articulating political stances from various subject-positions within political practice.[43]

A crucial implication of this socio-perspectival understanding of the distinction between what is legitimate and what is merely taken as such is that the legitimacy of an authority cannot be determined with certainty, definitively, or from a disengaged standpoint. Because, on a socio-perspectival account, being committed is a matter of being held to be committed (by others as well as oneself), the content of these commitments cannot be spelled out in abstraction or in advance of engagement in practice, but is rather determined provisionally in the actual play of relations.[44] The propriety of political stances is again a matter of taking stances—politics is stance-taking all the way down. Moreover, since the content of one's commitments is a matter of ongoing action and response, a subject cannot fully know in undertaking a commitment what will later count as living up to that commitment. This point holds also for the justification of political stances (that is, which considerations count as reasons entitling someone to a political stance), because the standing of reasons is as much a

part of the ongoing practice of stance-taking as the content of commitments. Disputing legitimacy is a matter of making explicit and altering the scores, not of discovering and communicating an independently real or true score.

7. Political judgment in medias res

The view I've tried to develop can be summarized as follows. The theoretical concept of 'political legitimacy' names a practical, political predicament: confronted with authorities that attempt to rule them, political subjects are forced, implicitly or explicitly, to take a stance. To take authority to be legitimate is to attribute to it an entitlement to rule and to undertake certain attendant political responsibilities (such as a commitment to treating it as a source of reasons). To reject it as illegitimate is to treat it as a coercive imposition. Calling a political authority legitimate or illegitimate is a way of making one's stance explicit. So 'legitimacy' is a piece of practical, political vocabulary that enables subjects to articulate and dispute their political stances with others. The distinction between the *de jure* and *de facto* senses of legitimacy reflects the social-perspectival character of the practice of disputing legitimacy: it articulates the distinction between political authority that *is* legitimate—from one's own perspective—and that which is *merely taken* to be so by others (or, reflexively, by oneself). This account does not collapse the distinction between what is legitimate and what is taken to be so; rather this distinction is interpreted as a permanent tension, a structural feature of political subjectivity that commits us to ongoing critical engagement. The content and validity of any subject's political stances and attendant commitments are provisionally determined in eventful, temporally extended and embodied practices of stance-taking. The predicament of distinguishing in practice between what is legitimate and what merely

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purports to be so is treated as a lived experience that can be made explicit in critical moments; it is not an abstract question calling for a general solution.

Yet, what difference does it make to recast the predicament in these pragmatic terms? After all, as political subjects, we still face the predicament of deciding what stance to take— whether the authority confronting us is legitimate and what sorts of further responsibilities this involves (to obey and uphold that authority? to resist?). So one possible reply would be to cast the task of theorizing principles and criteria of legitimacy as situated in actual practices of political dispute, rather than as seeking a privileged standpoint; and its results as always provisional, rather than aiming for a definitive resolution of the predicament.[45] While there is a lot to say for this, to leave it at that would be too hasty. Brandom's socio-perspectival account of normativity entails an acknowledgment of the contestability of norms and judgments of legitimacy, due to the fact that one's own perspective isn't sovereign (and neither is anyone else's). But, so far, the point remains abstract or formal, understood as a general feature of social practice. We must also ask what this means in the particular type of context in which this political predicament arises (namely, subjects confronting authorities). We need to ask, therefore, what kinds of practical engagement are involved in political judgment, and how this is different from applying a moral theory. What is it to distinguish in practice between legitimate authority and what merely purports to be so?

In other words, we need to direct our attention to the task of making explicit the ways in which the predicament engages us, and explore both the possibilities and limits of political judgment.[46] These are big questions, which I cannot exhaustively address (in part, the aim of this paper is precisely to point in this direction for further research). In closing, I want to briefly consider them in light of the confrontation between the *Bundesrepublik* and the radical left. How could somebody in West Germany who was perplexed by the situation determine

whether the government was really legitimate, or merely taken to be so by the majority of the population? What is involved in taking a stance in such a concrete situation?

While Brandom's theory of language isn't of much help in pursuing these questions, some recent currents of political philosophy draw attention, in different ways, to the significance of various forms of political contestability, and these can take us a bit further. As a preliminary response, I suggest that political judgment involves attuning oneself to at least three aspects of a political situation: political identity, representations of authority, and eventfulness. Such attunement to political reality is precarious: while each of these aspects enables us to take stances by constituting the repertoire of commitments in light of which stances and performances have their significance—as a fund of reasons on which we can draw in disputing legitimacy—each also potentially unsettles that same background—as a dimension of political contestation. At this point, the conception of political legitimacy developed here connects up with a range of approaches which James Tully has brought together under the rubric of "political philosophy as a critical activity," aiming to enhance the "perspectival abilities" of political subjects.[47]

First, the question whether the political authority one faces is legitimate, and what responsibilities one has in relation to it, is in part a question of *who* one is. In other words, what is at stake is one's *political identity*, including one's sense of membership or lack thereof in a political community.[48] For some in the RAF, violent resistance was a form of "truly holy self-realization," but their view of the implications of a left-wing identity was hotly contested in the wider Left movement; as a prominent left-wing academic argued, for someone on the left, "the killing of another individual is also a catastrophe for their own existence."[49] This suggests that political judgment is in part a matter of critical self-articulation. Yet on a pragmatic understanding of identity, who one is is not fully up to oneself, but is constituted and reconstituted in ongoing engagement with others, rather than

functioning as its prior ground. As Aletta Norval has put the point: "It is in and through our demands and claims that our identities are constituted politically."[50] Whether that self-understanding is to be understood in specifically moral terms, to be captured by a set of general principles and criteria, is not a question prior to politics, but something one has to find out in involvement with others. We can make the political predicament intelligible without addressing it from the start in a moral register, approaching it in first instance as a *political* question. Moral theory comes in (if it does) at a later stage: not in rendering the predicament intelligible, but as a particular (and contestable) universalistic mode of self-articulation. Moreover, as Patchen Markell has argued, if we see identity as constituted in ongoing engagement with others, then we need to acknowledge an irreducible sense of vulnerability as a condition of political judgment and agency.[51]

The second aspect of a political situation to which subjects attune themselves in taking stances pertains to *representations of authority*. In West Germany, "loyal citizens" and "urban guerillas" did not just disagree about how to understand themselves in relation to authority; they disagreed over the very nature of that authority. At stake was in part whether the terms in which authority presented itself—a parliamentary constitutional democracy—were an adequate representation of the relations of power subjects actually faced. Was it a "resilient democracy" or a "police state" or is neither of these terms adequate? Representing authority in a particular way warrants application of further terms, fosters expectations of the behavior of authority, affects perceptions of likely consequences of one's own actions, and has implications for what stance it would be appropriate to take. For example, whether one views the *Bundesrepublik* as a resilient democracy or a police state will affect one's view of elections being held and of the significance of the act of voting; one might view it, say, as a form of participation in government, and thereby as an exercise of power, or as a farce that has no bearing on the actual relations of power. Representing authority in certain ways is

incompatible with certain views of who one is in relation to it; it is inconsistent (at least without a quite elaborate further story) to view oneself as a democratic citizen participating in self-government, and to view the authority one faces as an arm of global imperialism. Importantly, representing authority involves more than an effort to get the facts straight by means of empirical or historical observation, to which we can subsequently apply a set of principles or criteria, because these representations are themselves subject to political contestation. Tully suggests in this respect that political philosophy can be understood as an ongoing critical activity that helps to render visible, conceptualize, and unmask authorities, rendering perspicuous the ways in which practices and institutions affect individuals' lives and constitute and constrict subjects' practical horizon, thereby making it possible to explicitly take a stance toward them.[52]

The final aspect of a political situation to which I want to draw attention is *eventfulness*, which refers to the constitutive yet contested significance for political stances of both local, immediate events and large-scale and historical events. Events constitute the constellation of meaning in which stances and performances have their significance, and they can prompt shifts of stances, calling for revisions of our commitments and entitlements. Importantly, the significance of an event cannot simply be read off of what happens, but depends how those confronted with it perceive, narrate, and respond to it and to each other. In Patchen Markell's words, it "is not a matter of the top-down application of an authoritative philosophical criterion: [...] the significance of events is also a matter of judgment, and, often enough, a matter for dispute, undertaken within the horizons of practical engagement."[53] A critical and arguably defining moment in the (pre)history of the RAF helps to bring this out. On June 2 1967, in an escalating confrontation between demonstrators and the police, a student, Benno Ohnesorg, was killed by an undercover policeman. The Left's subsequent radicalization rendered the event highly significant, though it did so in very different ways from different

points of view: for some, it called for more effective policing, for others it called for armed resistance. The Second World War provided a background against which this event attained its significance—indeed, whether Germany's Nazi period was *past* was precisely an issue of contention. For many in the Left, the killing of Ohnesorg was a sign of continuity with the Nazi regime, a moment at which the regime's democratic façade lifted and revealed its true character. To reject the *Bundesrepublik* was also to reject the prior generation and its responsibility for the Holocaust.[54] For others on the left, the second of June was not a sign of continuity, but a break with the fragile democratic beginnings of the *Bundesrepublik.* Historical experience framed current events on the other side of the political spectrum as well, though in the opposite way. The establishment invoked the fall of the Weimar Republic and the rise of Nazism as a justification for their strong reaction to dissent. They perceived the radical opposition from the Left as an existential threat in part because of the proven fragility of democracy in the Weimar Republic.[55] The constitutional democratic order needed defense mechanisms against subversion, what was referred to as "militant" or "resilient" democracy.[56] In this light, the killing of Ohnesorg could be seen as an unfortunate, but provoked incident.

In short, taking a stance involves critically articulating who one is, interpreting power and representing it as authority, and narrating events, in relation to concrete others. What I'm suggesting is that these conditions of politics—political identity, representation of authority, and the uptake of events—pertain to political legitimacy not just in the sense of changing the circumstances of application for independently secured moral knowledge; rather, they are bound up in a constitutive sense with the content and justification of political stances. They appear to have a dual character, both enabling and potentially unsettling our practical grip on the situation. Rather than leaving political subjects without any ground to stand on, this approach points toward the richness of the normative resources often available *within* a

situation while acknowledging their contestability. A political situation is full of critical potential precisely because there is not one way of understanding it but many, because the situation is open to a range of possible descriptions and framings, and we are held responsible to these ways of understanding, by ourselves and by others. To judge politically is not to stand above the fray of competing perspectives, but rather involves the ability to navigate different perspectives, to assess the differences in significance that performances and events have from different points of view. As political subjects, our dependence on others in assessing and even constituting who we are politically, on necessarily limited representations of the forms of authority we face, and on unpredictable events and their contestable uptake, is certainly unsettling—exposing us to vulnerability, fallibility, and uncertainty. That makes it important to draw our attention toward these conditions of politics. This orients us toward political reality, not as a set of facts to which we should apply independent principles and criteria, but as a common world that appears in mutual engagement.[57]

[1] Hanna Pitkin, "Obligation and Consent--II," *American Political Science Review*, 60 (1966), 39-52 at p. 39.

[2] Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, vol. 1 (Berkeley: University of California Press, 1978), p. 213. I translate *Herrschaft* as "rule" rather than "domination" (as in the official English translation), because "domination" carries a negative connotation of naked power that "rule" and "*Herrschaft*" do not.

[3] As many encyclopedia entries on the subject attest. See Christopher K. Ansell, "Political Legitimacy," in *International Encyclopedia of the Social and Behavioral Sciences*, ed. M.J. Smelser and Paul Bates (Oxford: Pergamon Press, 2001), 8704-8706; A. John Simmons, "Legitimacy," in *Encyclopedia of Ethics*, ed. Charlotte B. Becker (Taylor & Francis, 2001), 960–963; Fabienne Peter, "Political Legitimacy," in *Stanford Encyclopedia of Philosophy* (2010), http://plato.stanford.edu/entries/legitimacy/; Wilfried Hinsch, "Legitimität," in *Handbuch der politischen Philosophie und Sozialphilosophie*, ed. Stefan Gosepath, Wilfried Hinsch, and Beate Roessler, vol. 1 (Berlin: de Gruyter, 2008), 704-712; David Beetham, "Legitimacy," in *Routledge Encyclopedia of Philosophy*, ed. Edward Craig (London: Routledge, 1998), 538-541. Exceptions tend to prove the rule by simply ignoring the other side of the division of labor, e.g. Richard E. Flathman, "Legitimacy," in *A Companion to Contemporary Political Philosophy*, ed. Robert Goodin, Philip Pettit, and Thomas Pogge (Oxford: Blackwell, 1995), 527–533; Mattei Dogan, "Conceptions of Legitimacy," in *Encyclopaedia of Government and Politics* (London: Routledge, 1992), 116-26.

[4] David Easton, *A Systems Analysis of Political Life* (New York: John Wiley & Sons, 1965); Carl J. Friedrich, *Man and His Government* (New York: McGraw-Hill, 1963); M. Stephen Weatherford, "Measuring Political Legitimacy," *American Political Science Review*, 86 (1992), 149–166.

[5] For example, Anthony Laden synthesizes the turn to practice in political liberalism and deliberative democratic theory in arguing for what he calls a "political" as opposed to a "theoretical" approach to political philosophy. Anthony S. Laden, *Reasonably Radical: Deliberative Liberalism and the Politics of Identity* (Ithaca: Cornell University Press, 2001), pp. 15-17. Cf. Richard Rorty, "The Priority of

Democracy to Philosophy," in *Objectivity, Relativism, and Truth: Philosophical Papers, vol. 1* (Cambridge: Cambridge University Press, 1991), 175-196; Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996); John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005). For realist turns to politics, see, e.g., Raymond Geuss, *Philosophy and Real Politics* (Princeton: Princeton University Press, 2008); Bernard Williams, *In the Beginning was the Deed: Realism and Moralism in Political Argument* (Princeton: Princeton University Press, 2005). Finally, for agonistic turns to political practice, see Bonnie Honig, "Between Decision and Deliberation: Political Paradox in Democratic Theory," *American Political Science Review*, 101 (2007), 1-17; James Tully, "Political Philosophy as a Critical Activity," *Political Theory*, 30 (2002): 533-555; Chantal Mouffe, *On the Political* (London: Routledge, 2005).

[6] David Beetham, *The Legitimation of Power* (Basingstoke: MacMillan, 1991); Bruce Gilley, *The Right to Rule: How States Win and Lose Legitimacy* (New York: Columbia University Press, 2009); Robert Grafstein, "The Failure of Weber's Conception of Legitimacy: Its Causes and Implications," *Journal of Politics*, 43 (1981), 456–472; Jürgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (Boston: Beacon Press, 1975); John H. Schaar, "Legitimacy in the Modem State," in *Legitimacy and the State*, ed. William E. Connolly (Oxford: Basil Blackwell, 1984), 104–133.

[7] This is not to deny that important work has been done in this direction. The most significant reframing of legitimacy is provided by Jürgen Habermas, who argues that it has a kind of normativity that cannot be derived from morality and is internal to democratic practice. See Habermas, *Between Facts and Norms*. His account is complex and I cannot address it in detail here. I argue elsewhere that Habermas cannot fully account for the political point of the notion of legitimacy because the practice of disputing legitimacy exceeds the bounds of the democratic procedures that he defines—a point masked in his theory by an ambiguous construal of the participant perspective on law. Chris Thornhill's recent proposal to view principles of legitimacy as functionally required "societal norms" seems to ignore the participant perspective that Habermas ambiguously reconstructs, and thereby fails to acknowledge that 'legitimacy' isn't just something claimed and functionally required by law but

also used by citizens to dispute law's normativity. Chris Thornhill, "Political Legitimacy: A Theoretical Approach Between Facts and Norms," *Constellations*, 18 (2011), 135-169. Andrew Mason also argues for the need to rethink the notion of legitimacy, but his account differs from mine in part because he frames the "political question" not as a matter of contesting rule but of managing disagreement. Andrew Mason, "Rawlsian Theory and the Circumstances of Politics," *Political Theory*, 38 (2010), 658-683. Realists sometimes conceive political legitimacy as a minimal standard of acceptability, but here the status of political legitimacy and its relation to the normativist endeavor tends to remain undertheorized. See Geuss, *Philosophy and Real Politics*, pp. 34-36; Raymond Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001), pp. 31-37; Bernard Williams, "Realism and Moralism in Political Theory," in *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton: Princeton University Press, 2005), 1–17. From a social-scientific perspective, the most significant reconceptualization of political legitimacy is Beetham, *The Legitimation of Power*. See also Jonathan Waskan, "De Facto Legitimacy and Popular Will," *Social Theory & Practice*, 24 (1998), 25-56; Jean-Marc Coicaud, *Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility* (Cambridge University Press, 2002); Enzo Rossi, "Justice, Legitimacy and (Normative) Authority for Political Realists," *Critical Review of International Social and Political Philosophy*, 15 (2012), 149–164.

[8] My account draws mainly on Stefan Aust, *The Baader-Meinhof Complex*, trans. Anthea Bell (London: The Bodley Head, 2008); Hans Kundnani, *Utopia or Auschwitz: Germany's 1968 Generation and the Holocaust* (London: Hurst, 2009); Jacco Pekelder, "From Militancy to Democracy? The Radical Left in West Germany", in *Creative Crises of Democracy*, ed. Joris Gijsenbergh, Saskia Hollander, Tim Houwen, and Wim de Jong (Brussels: Peter Lang, 2012), 309-330; Jeremy Varon, *Bringing the War Home: The Weather Underground, the Red Army Faction, and Revolutionary Violence in the Sixties and Seventies* (Berkeley: University of California Press, 2004).

[9] A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979); Flathman, "Legitimacy"; David Copp, "The Idea of a Legitimate State," *Philosophy and Public Affairs*, 28 (1999), 3-45; Thomas Christiano, "Authority," *Stanford Encyclopedia of*

Philosophy (2004), http://www.science.uva.nl/~seop/entries/authority/

[10] Thomas Nagel, *Equality and Partiality* (Oxford: Oxford University Press, 1991)

[11] A. John Simmons, "Justification and Legitimacy," *Ethics*, 109 (1999), 739-771.

[12] Allen Buchanan, "Political Legitimacy and Democracy," *Ethics*, 112 (2002); Thomas Christiano, "The Authority of Democracy," *Journal of Political Philosophy*, 12 (2004), 266–290.

[13] Bernard Williams, *In the Beginning was the Deed*. See, for instance, Buchanan, "Political Legitimacy and Democracy", p. 689; Copp, "The Idea of a Legitimate State", p. 4; David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008), p. 2; Leslie Green, *The Authority of the State* (Oxford: Oxford University Press, 1990), p. 5; Nagel, *Equality and Partiality*, pp. 35, 39; Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), p. 6; Simmons, "Justification and Legitimacy". In contrast, some theorists try to justify principles of legitimacy not in moral, but prudential or instrumentally rational terms; see Jörg Kühnelt (ed.), *Political Legitimization without Morality?* (Dordrecht: Springer, 2008).

[14] Thomas Nagel, *Equality and Partiality*, pp. 35, 39.

[15] I do not mean to deny that legitimacy-claims carry a reference to norms (in the broadest sense of the term), but that this relation is not a good starting point for explaining the concept, as it will invoke a reified conception of those norms as a distinct set of explicit, theoretically specifiable principles and criteria, rather than as situated and contestable proprieties implicit in practice.

[16] On the pragmatic turn in contemporary philosophy, see Richard J. Bernstein, *The Pragmatic Turn* (Polity, 2010); William Egginton and Mike Sandbothe (eds.), *The Pragmatic Turn in Philosophy: Contemporary Engagements Between Analytic and Continental Thought* (Albany: State University of New York Press, 2004). A classical statement is Richard Rorty, *Philosophy and the Mirror of Nature* (Princeton: Princeton University Press, 1979).

[17] For an overview, see Ronald Loeffler, "Neo-Pragmatist (Practice-Based) Theories of Meaning," *Philosophy Compass*, 4 (2009), 197-218.

[18] Robert Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment* (Cambridge: Harvard University Press, 1994); Robert Brandom, *Articulating Reasons: An*

Introduction to Inferentialism (Cambridge: Harvard University Press, 2001); Robert Brandom,

Reason in Philosophy: Animating Ideas (Cambridge: Harvard University Press, 2009). I am also

indebted to Joel Anderson, "Disputing Autonomy: Second-Order Desires and the Dynamics of

Ascribing Autonomy," *Sats - Nordic Journal of Philosophy*, 9 (2008), 7-26; Mark Lance and Heath

White, "Stereoscopic Vision: Persons, Freedom, and Two Spaces of Material Inference,"

Philosopher's Imprint, 7 (2007), 1–21; Michael Williams, "Context, Meaning, and Truth,"

Philosophical Studies, 117 (2004), 107–129.

[19] For a more detailed account, see Thomas Fossen, "Politicizing Brandom's Pragmatism: Normativity

and the Agonal Character of Social Practice", *European Journal of Philosophy* (forthcoming).

[20] Brandom, *Making It Explicit*, pp. 83, 145; cf. Anderson, "Disputing Autonomy."

[21] Brandom, *Making It Explicit*, p. 166.

[22] Ibid., pp. 488, 590.

[23] Brandom's argument turns on a problem of regress that stems from the observation that every

explicit rule or principle can be applied appropriately or inappropriately. Consequently, as

Wittgenstein famously put it, "there is a way of grasping a rule which is not an interpretation, but

which is exhibited in what we call 'obeying the rule' and 'going against it' in actual cases." Ludwig

Wittgenstein, *Philosophical Investigations*, trans. G.E.M. Anscombe (Oxford: Blackwell, 2001), p.

201; Brandom, *Making It Explicit*, pp. 18-55.

[24] Of course, this is not to deny that legitimacy-claims refer to an object of evaluation, but only that a

definition of this object is problematic as a criterion for demarcating certain uses of 'legitimacy' as

political. I use the notion of 'political authority' in an abstract sense as referring to whatever object of

evaluation is at stake in political legitimacy-claims. Therefore, as I use it, 'political authority' should

not be taken already to mean '*legitimate* authority.'

[25] See, for instance, John Rawls' notion of the "basic structure" of society; *A Theory of Justice*

(Cambridge, MA: Harvard University Press, 1971).

[26] For example, Hannah Arendt, *The Human Condition* (Chicago: University Of Chicago Press, 1998).

[27] "Politics consists of practices of settlement *and* unsettlement, of disruption *and* administration, of

extraordinary events or foundings *and* mundane maintenances. It consists of the forces that decide undecidabilities *and* of those that resist those decisions at the same time. To reduce politics to only one side of each of these operations, to depoliticize the opposite side […] is to displace politics, to deny the effects of power in some of life's arenas for the sake of the perceived goods that power stabilizes under the guise of knowledge, respect, rationality, cognition, nature, or the public-private distinction itself." Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, N.Y.: Cornell University Press, 1993), pp. 200, 205.

[28] This responds to Michel Foucault's observation that "[t]here are two meanings of the word 'subject': subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge." Michel Foucault, "The Subject and Power," in *Power: Essential Works of Foucault*, ed. James D. Faubion, (New York: The New Press, 2000), p. 331; cf. Tully, "Political Philosophy as a Critical Activity," pp. 539-540.

[29] On some of the ways in which citizenship partly construes political subjects' subjective possibilities for agency, see Kevin Olson, "Constructing Citizens," *Journal of Politics*, 70 (2008), 40-53. On how it can affect the material conditions for agency, see Kevin Olson, *Reflexive Democracy: Political Equality and the Welfare State* (Cambridge, MA: MIT Press, 2006).

[30] On the relational and dynamic view of power assumed here, see Michel Foucault, *The History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley (New York: Vintage, 1990); Rouse, "Power/Knowledge" in *The Cambridge Companion to Foucault*, ed. Gary Gutting, 2nd ed. (Cambridge: Cambridge University Press, 2005), 95-122; Steven Lukes, *Power: A Radical View* (Basingstoke: Palgrave Macmillan, 2004); Thomas Wartenberg, *Forms Of Power: From Domination to Transformation* (Temple University Press, 1991).

[31] See, for instance, James Tully, "The Agonic Freedom of Citizens." *Economy and Society*, 28 (1999), 161-182; Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999), pp. 3-5, 15-60; Michel Foucault, "Governmentality," in *Power: The Essential Works of Foucault*, ed. James D. Faubion (New York: The New Press, 2000), 201-222.

[32] Where such a normative expectation is absent, I propose we speak of 'domination' rather than

(purported) rule. In a similar context, Bernard Williams gives the example of the Spartans, who explicitly regarded their slave-class of Helots as enemies. In such a situation, it seems, there can be no expectation of compliance based on responsibility, only on force. Yet this seems rare; usually there is at least the semblance of a normative claim in relations of power, and this is what generates the predicament that was our starting point. See Williams, "Realism and Moralism in Political Theory," p. 5.

[33] This point ties in with the question of political obligation, which I treat in detail elsewhere.

[34] We can contrast *political* legitimacy in the sense articulated here with *democratic*, *juridical*, and *moral* legitimacy. Each of the latter might be defined with respect to a distinct set of explicit principles or criteria. So we can say that some decision or law is democratically legitimate (or not) with respect to certain procedural principles that express democratic ideals. Or we may say that it is legally valid (or not) with respect to certain constitutional principles. Or we may say that it is (im)moral with respect to some moral law. But because the propriety of democratic, juridical, or moral principles and criteria can be at stake in a political situation, the political sense of legitimacy under discussion here is more fundamental. This is not to say that democratic, juridical, and moral considerations are irrelevant, but that the political predicament can be made intelligible without invoking a prior conception of them.

[35] Luc Boltanski and Laurent Thévenot, "The Sociology of Critical Capacity," *European Journal of Social Theory*, 2 (1999), 359-377 at p. 359.

[36] Boltanski and Thévenot, "The Sociology of Critical Capacity," p. 360.

[37] RAF, "Über den bewaffneten Kampf in Westeuropa" (1971), quoted in Varon, *Bringing the War Home*, p. 199. See also RAF, "Das Konzept Stadtguerilla," (1971), http://labourhistory.net/raf/ (accessed August 21, 2012). Later on, the new generation would deploy violence mainly with the more immediate goal of forcing the government to release their imprisoned comrades.

[38] In view of this communal dimension of legitimacy-claims, critical political moments are also what Jason Frank calls "constituent moments"; a claim to speak for a people or political community depends on its felicity in bringing about the community in the name of which it claims to speak, going

beyond the pre-given understandings of that community. Jason Frank, *Constituent Moments: Enacting the People in Postrevoluntary America* (Duke University Press, 2010).

[39] See Brandom, *Making It Explicit*, pp. 37-41, 52-55.

[40] My argument in this section draws on Brandom's account of truth, knowledge, and objectivity. See Brandom, *Making It Explicit*, pp. 584-601; Robert Brandom, "Knowledge and the Social Articulation of the Space of Reasons," *Philosophy and Phenomenological Research*, 55 (1995), 895-908.

[41] Brandom, *Making It Explicit*, p. 627.

[42] J. L. Austin originally used the notion of performativity to indicate speech acts that (in Kukla and Lance's words) "in their very utterance serve to enact, institute, or make true what they assert," for example, when an official declares a couple to be married. Rebecca Kukla and Mark Lance, *'Yo!' and 'Lo!': The Pragmatic Topography of the Space of Reasons* (Cambridge: Harvard University Press, 2009), p. 87; J.L. Austin, *How to Do Things with Words*, 2nd ed. (Oxford: Clarendon Press, 1975). In this sense, however, *assertions* of political legitimacy are not performative. For if asserting legitimacy would count as making-true that authority is legitimate, then there would be no room for the notion that one can be mistaken in one's assertion of legitimacy. Calling legitimacy performative in this sense would thus collapse its normativity. Such considerations lead Pitkin to label legitimacy as "quasi-performative:" "To call something legitimate is at least normally to imply something about its authoritativeness, bindingness; to call something legitimate is to take a position toward it—a position that may have consequences with respect to one's own or other people's obligations and responsibilities. […] Yet the word is by no means a pure performative, nor an expression of personal preference or individual taste. […] The truth is that 'legitimate' means something like 'lawful, exemplary, binding'—not 'what *is commonly considered* lawful, exemplary, binding,' nor 'what *ought to be considered* lawful, exemplary, binding.'" Hanna Pitkin, *Wittgenstein and Justice: On the Significance of Ludwig Wittgenstein for Social and Political Thought* (Berkeley: University of California Press, 1972), pp. 280-282. Furthermore, it is a mistake to deny there is content to an assertion of legitimacy, because this would not allow us to make sense of sentences in which the concept has an embedded role rather than functioning as an assertion (such as conditionals). P. T.

Geach, "Ascriptivism," *The Philosophical Review*, 69 (1960), pp. 221-225. However, instead of conceiving the performative as an kind of 'making,' where the performance is a delimited occurrence leaving behind a finished product (a legitimate political authority), we can conceive the action of taking a stance as part of an ongoing performance.

[43] Keeping these differences of perspective in focus would also clarify the confusion generated in social science by conflating legitimacy with a general belief in or sense of legitimacy. The grammatical mistake here is to equivocate between saying that an authority is legitimate (expressing one's stance), and that it is in general taken to be legitimate (interpreting the stances of others). See for instance, Weber, *Economy and Society*, Vol. 1, pp. 31, 214; Easton, *A Systems Analysis of Political Life*, pp. 278, 287–288.

[44] As Brandom puts the point, in the context of a discussion of truth-claims: "Sorting out who should be counted as correct, whose claims and applications of concepts should be treated as authoritative, is a messy retail business of assessing the comparative authority of competing evidential and inferential claims. […] There is only the actual practice of sorting out who has the better reason in particular cases. The social metaphysics of claim-making settles what it means for a claim to be true by settling what one is doing in *taking* it to be true. It does not settle which claims *are* true—that is, are *correctly* taken to be true. That issue is adjudicated differently from different points of view, and although these are not all of equal worth there is no bird's-eye view above the fray of competing claims from which those that deserve to prevail can be identified nor from which even necessary and sufficient conditions for such deserts can be formulated. *The status of any such principles as probative is always itself at issue in the same way as the status of any particular factual claim*." Brandom, *Making It Explicit*, p. 601 (last emphasis added). The commitments at stake there are matters of fact about the world ("doxastic commitments"), but this point also applies to practical commitments.

[45] On this point, see Rutger Claassen, "Making Capability Lists: Philosophy versus Democracy," *Political Studies*, 59 (2011), 491–508.

[46] This is a different way of orienting political philosophy toward the kind of political experience that I take Bonnie Honig to articulate with her notion of the "paradox of politics." Honig, "Between Decision and Deliberation."

[47] James Tully, "Political Philosophy as a Critical Activity."

[48] This constitutive significance of political identity holds not just for political subjects but also for rulers. On this point, see Rodney Barker, *Legitimating Identities: The Self-Presentations of Rulers and Subjects* (Cambridge: Cambridge University Press, 2001).

[49] The former words are of the father of one of the founding members, quoted in Aust, *The Baader-Meinhof Complex*, p. 40; the latter are from Peter Brückner, quoted in Pekelder, "From Militancy to Democracy?"

[50] Aletta Norval, "Passionate subjectivity, contestation and acknowledgement: Rereading Austin, and Cavell," in *Law and Agonistic Politics*, ed. Andrew Schaap (Farnham: Ashgate, 2009), p. 171; cf. Aletta Norval, *Aversive Democracy: Inheritance and Originality in the Democratic Tradition* (Cambridge: Cambridge University Press, 2007). Or, as David Owen puts it: "it is through the exercise of one's political voice that one discovers (ongoingly) where one stands politically (the limits of that to which one can assent) and how one stands politically in relation to others (the depth and extent of one's agreement with others)." David Owen, "Cultural Diversity and the Conversation of Justice: Reading Cavell on Political Voice and the Expression of Consent," *Political Theory*, 27 (1999), 587.

[51] Patchen Markell, *Bound by Recognition* (Princeton: Princeton University Press, 2003).

[52] James Tully, "Political Philosophy as a Critical Activity," p. 534. This is a way, for example, of understanding the point of Michel Foucault's genealogies of disciplinary practices and governmentality. See Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York: Vintage, 1995); Michel Foucault, *"Society Must Be Defended": Lectures at the College de France, 1975-1976*, trans. David Macey (New York: Picador, 2003).

[53] Patchen Markell, "The Rule of the People: Arendt, Archê, and Democracy," *American Political Science Review*, 100 (2006), 1-14, at pp. 12-13.

[54] See Kundnani, *Utopia or Auschwitz*.

[55] As the historian Jeremy Varon puts it: "Memories of the collapse of the Weimar Republic and the rise of Nazism led the founders of the Federal Republic to believe that if it were to survive, the new democracy had to be aggressively intolerant of those who threatened it." Varon, *Bringing the War Home*, p. 255. Some newspapers explicitly drew parallels between student protesters and the terror of in the Weimar Republic (Ibid., p. 39).

[56] In German: "*Streitbare*" or "*wehrhafte Demokratie*." See Pekelder, "From Militancy to Democracy?" One example of such "resilience" was a constitutional provision for the prohibition of anti-democratic political parties, invoked against the communist party in 1956.

[57] There is an interesting affinity on this point between Brandom's pragmatism and the work of Hannah Arendt. On Linda Zerilli's interpretation: "We have the world in common *because* we view it from different perspectives. Absent those perspectives we lose 'the sameness of the object,' its realness or 'objective' quality. Rather than threaten our shared sense of worldly reality, in other words, plurality generates it. Plurality—if we take proper account of it—saves us from both objectivism and subjectivism, and therefore from risking dogmatism or skepticism, Arendt suggests." Linda M.G. Zerilli, *Feminism and the Abyss of Freedom* (Chicago: University Of Chicago Press, 2005), 125-164, at p. 140; cf. Kimberley Curtis, *Our Sense of the Real: Aesthetic Experience and Arendtian Politics* (Ithaca: Cornell University Press, 1999), 23-66. For (Zerilli's) Arendt, this essentially perspectival sense of objectivity is what marks off the political from the conceptual, empirical and scientific world. In this vein, we might suggest that according to Brandom's pragmatism even the conceptual, empirical, and scientific are political. Cf. Fossen, "Politicizing Brandom's Pragmatism."