

Degrees of Legitimacy

Matthias Brinkmann¹D

Accepted: 24 July 2024 / Published online: 6 September 2024 © The Author(s) 2024

Abstract

It is increasingly common in the philosophical literature to claim that political legitimacy, normatively understood, comes in degrees. However, most authors fail to specify what talk of degrees means, and the notion remains opaque. Using the Hohfeld schema as a guide, I survey possible accounts, distinguishing them into "width", "depth", and "weight" proposals. I argue that each fails to provide a convincing account of scalar legitimacy. Thus, talk of degrees of legitimacy, as currently used, is in serious need of explanation.

Keywords Political legitimacy \cdot Right to rule \cdot Political concepts \cdot Scalar values \cdot Hohfeld schema

Introduction

Most authors in the philosophical literature assume that political legitimacy is a binary property: some state or institution is legitimate or it is not. Explicit defences of this assumption are hard to find, however. Its status as the mainstream is more indirectly visible. Many theorists, for example, frame their theory of legitimacy as a search for necessary and sufficient conditions. Authors state their central normative criteria of legitimacy in terms of "if" and "if and only if",¹ not in terms of "to the degree that" (e.g., "a state is legitimate if it is a constitutional democracy" not "a state is legitimate to the degree that it is a constitutional democracy"). Moreover, many authors think that legitimacy is the right to rule.² Because you either have a right or you do not, this seems to suggest that legitimacy is binary (Buchanan 2010, p. 86).

¹ For a few examples from a wide literature, see Applbaum 2019, p. 77; Estlund 2008, chap. 3; Reglitz 2015; Stilz 2019, p. 90.

² See Brinkmann and Wibye 2023 for textual evidence.

Matthias Brinkmann mail@matthiasbrinkmann.de

¹ Faculty of Philosophy, LMU München, Munich, Germany

Nonetheless, there is a significant minority of authors who have claimed that legitimacy comes in degrees, and the frequency of such proposals has increased.³ It seems indeed intuitive that legitimacy should be available in degrees. What we mean by some institution or policy being "more legitimate"—if meant in a normative, not merely descriptive sense—remains opaque, however. Thus, a philosophical account of the concept is needed. Unfortunately, even the authors who propose that legitimacy is scalar tend to tell us little about how precisely we ought to understand the notion. Moreover, even where authors tackle the issue explicitly, they arrive at divergent proposals of what degrees of legitimacy might be.

This paper aims to shed light on this issue by systematically categorizing and critically analysing various options for what it could mean for legitimacy to be scalar.⁴ I start by discussing some methodological issues concerning the concept of legitimacy (sect. "The Grounds, Concept, and Effects of Legitimacy"), then constrast binary and scalar conceptions (sect. "From the Binary to the Scalar Concept"). In the main body of the paper, I discuss attempts to understand scalar legitimacy, which I group into width (sect. "Width Scalarity"), depth (sect. "Depth Scalarity"), and weight (sect. "Weight Scalarity") proposals, as well as hybrid and contextual accounts (sect. "Hybrid and Contextual Proposals"). I find all proposals lacking or incomplete. I end with some general reflections (sect. "Concluding Remarks").

The Grounds, Concept, and Effects of Legitimacy

We are interested in political legitimacy on a conceptual level. This means that we are interested in *what it is* for an institution to be (more or less) legitimate. We must distinguish this question from at least two separate issues, the normative *grounds* and the normative *effects* of legitimacy.⁵ Put explicitly, we are interested in the middle part of a three-part schema:

If some entity fulfils condition(s) C, then it possesses normative property P, leading to normative effect(s) E.

³ Authors who claim that legitimacy is scalar are Altman and Wellman 2009, pp. 151–153; Barnett 2004, pp. 51–52; Besson 2009, p. 345; Besson and Martí 2018, p. 510; Cibik 2024, p. 351; Franck 2000, p. 32; Greene 2016, p. 87; Greene 2019, p. 76; Jackson 2018; Larmore 2020, pp. 118–119; Martí 2017, pp. 731–735; Mason 2007, p. 682; Mason 2010, p. 670; Rafanelli 2021, chap. 3; Sangiovanni 2019; Sleat 2014, p. 13; Zurn 2010, pp. 200–201. Tesón (1998, p. 40) and Keohane (2003) argue that the related concept "sovereignty" is scalar. Authors who discuss the possibility of scalar legitimacy without taking a firm view are Galoob and Winter (2019), Hall (2015, p. 8), Kirshner (2018), and Wendt (2019). Authors who remain sceptical are Adams (2018, p. 101) and Buchanan (2010, p. 86), although Buchanan later expresses more sympathy (Buchanan 2019). Pettit allows for a scalar notion of legitimacy, but endorses a binary notion on pragmatic grounds (Pettit 2012, p. 139).

⁴ I use "scalar" and "comes in degrees" interchangeably. Accounts which claim that there is a finite, greater-than-one number of degrees of legitimacy also count as scalar for our purposes.

⁵ I am grateful to a blind reviewer for pressing me to clarify these issues.

Let us start with the difference between the grounds of a normative property and what that normative property is.⁶ Take the utilitarian claim that an action is right just in case it maximizes aggregate utility. The utilitarian does *not* claim that *what it is*, conceptually speaking, for an action to *be right* is to be utility-maximizing. If this were the case, then utilitarianism would express the tautological claim that if an action maximizes aggregate utility, it then possesses the property of maximizing aggregate utility. Instead, moral rightness is, roughly speaking, the property of an action that it is permissible to do it. (There is likely more to rightness, but this need not concern us here.) Thus, utilitarianism is the *non*-tautological claim that

if some action maximizes utility (= condition), then it possesses the property of permissibility (= property).

One upshot is that our concept of moral rightness should be neutral between different theories of what makes an action is right. Otherwise, it would not be intelligible how, for example, a utilitarian and a non-utilitarian disagree. If they did not share the same concept, they would not even theorize about the same property.

Similarly, whatever the concept of legitimacy, it should be neutral between major explanations of the normative grounds of legitimacy. Consider, for example, the claim that political legitimacy rests on public justification. If we understood this claim as the proposal that legitimacy *is* public justification, then it would become true *by definition* that publicly justified institutions are legitimate. Anyone advocating for alternative grounds of legitimacy would not even be using the concept "legitimacy" correctly; they would fail to talk about the same issue. But this is implausible. Someone who proposes, for example, that legitimacy rests on consent is not talking about a different property. Both the public-justification and the consent theorist agree on the concept of legitimacy; they *dis*agree about the grounds of legitimacy. Put differently, our account of the concept of legitimacy must be neutral between major theories of the grounds of legitimacy.

Let us turn to the concept/effect distinction. Imagine that we know some action to be morally right. We might make the further claim that people should be praised for doing it. But being praiseworthy for doing an action is *not* what *it is* for an action to be *right*. The claim that rightness is linked to praiseworthiness is not a claim about either the grounds or concept of rightness, but about the effects of something being right:

If some action is morally right (= property), then its doer should be praised (= effect).

How are we to distinguish between the property itself and the normative effects of something possessing that property? One way to identify the difference is if the normative effects are contingent. If, for example, people should only be praised for doing certain right actions, then we would be hard-pressed to think that it was part of the concept of rightness. More evidence is provided again by the "talking past each other" test. Imagine that someone disagreed that rightness was linked to

⁶ I speak of the *grounds* of a property and the *conditions* for it obtaining interchangeably. On the idea of "grounds of legitimacy", see Peter 2023.

praiseworthiness. Would such a person talk about a different property? I think our answer should be no: such a person still intelligibly talks about rightness, even if they might be wrong about the link between rightness and praiseworthiness.

We can apply these distinctions to the case at hand. If legitimacy is a binary property, then we are looking to fill in the middle variable in the following schema:

If some political institution fulfils condition(s) C, then it possesses political legitimacy, leading to normative effect(s) E.

Analogously, reconceptualizing all three elements as scalar, we are looking at the following schema:

To the greater degree that some political institution fulfils condition(s) C, it possesses the property political legitimacy to greater degree, leading to a greater amount of normative effect(s) E.

The defender of the scalar concept of legitimacy owes us an explanation of the middle variable—of *what it is* for an institution to possess some (higher or lower) degree of political legitimacy. A natural attempt is to extrapolate from the binary concept an explanation of the scalar concept. Philosophical coherence suggests this strategy: whatever it is for some institution to be legitimate to some degree should, in some way, be compatible with what it is for an institution to be legitimate *full stop*.

I fill in the details of this strategy in the next section. In the rest of this section, let me highlight a general interpretive problem that the distinction between the grounds, concept, and effects of legitimacy poses. In particular, "if ... then" language turns out to be ambiguous. The sentence "if some political institution is more legitimate, then it is more X" can be interpreted to express either a claim about the concept (to be more legitimate is to be more X) or the effects (being more legitimate leads to having more X) of legitimacy. "If some institution is more X, then it is more legitimate" can again be interpreted as a claim about the concept of legitimacy, but also its grounds (greater legitimacy rests on greater X).

We can see the problem if we turn to a proposal which, at first sight, looks to be concerned with the concept of legitimacy. Christopher Zurn suggests that we should think of legitimacy as operating akin to a "regulative ideal", with Zurn identifying the ideal as a form of constitutional democracy. He highlights several features of regulative ideals, but the most important for our purposes is that "achieving an ideal is not a matter of meeting some threshold requirement but of approximating it to a greater or lesser degree" (Zurn 2010, p. 201). Thus, Zurn concludes, legitimacy is a matter of degrees. If we interpret him to provide a definition of legitimacy, Zurn would claim that

what *it is* for an institution to be more legitimate is to more closely approximate the regulative ideal of constitutional democracy.

However, this definition of legitimacy fails for reasons we have now encountered. If *being* more legitimate *consists in* more closely approximating the ideal of constitutional democracy, then a certain substantive moral theory—namely, that an institution is legitimate to the degree that it approximates constitutional democracy—becomes tautologously true. At the same time, theories which reject a strong link between legitimacy and democracy turn out to be *definitionally* false—they would not even *talk about* the subject matter of legitimacy. Zurn, then, is best interpreted as defending a theory of the normative grounds of scalar legitimacy. This also means, however, that he gives us no account of the concept of scalar legitimacy.

We encounter similar interpretative difficulties with other authors. Many philosophers who seem to be making claims about the concept of legitimacy could also be interpreted as making claims about the grounds or effects of legitimacy. José Luis Martí, for example, defends a "developmentalist" account of legitimacy, similar to Zurn's, according to which legitimacy is possessed by institutions insofar as they approximate democracy (Martí 2017). This is also most naturally interpreted as a claim about the grounds of legitimacy; claims about what it is for an institution to be more legitimate are not directly related to his developmentalism, although we can find some suggestions.

To avoid getting bogged down in interpretative issues, I have decided to focus on generic claims about what scalar legitimacy might be. Some of these positions correspond to proposals put forth by authors in the literature, and I will credit them where appropriate. However, I will spend little to no time analysing specific claims authors make. Another reason to do so is that discussion of scalar legitimacy in the literature is very underdeveloped. Despite many authors claiming legitimacy to be scalar (see references in fn. 3), only four theorists (Larmore, Martí, Rafanelli, and Sangiovanni) offer anything resembling a worked-out account. Even these authors often offer little more than brief remarks describing what degrees of legitimacy might be.

From the Binary to the Scalar Concept

Let us return to the strategy I mentioned above—to derive the scalar concept from the binary. We can now add the observation that most authors specify (binary) legitimacy to be the *right to rule*. This might seem a rather innocuous claim, but it gains some weight if we use—as most authors do—Hohfeldian analysis to gain insight into that right (see also Brinkmann and Wibye 2023).

The Hohfeld schema disambiguates the notion of "right" into four more specific *incidents*—claims, liberties, powers, and immunities (Hohfeld 1919). Moreover, Hohfeldian analysis emphasises that what looks, on first sight, like a singular right—for example, an ownership right in one's pen—turns out, on closer inspection, to be a complex bundle of Hohfeldian incidents—for example, a liberty to use the pen, a claim not to have it taken by others, a power to sell it, and so forth. Each of these incidents in turn is held against a huge multitude of counterparties.⁷ Thus, if legitimacy is a right, then it turns out to be a bundle of rights (Copp 1999; Zhu 2012).

Using the Hohfeld schema, we can now specify the standard binary concept of political legitimacy as follows:

⁷ An in-depth introduction is provided in Kramer 1998.

Being legitimate means possessing some bundle of Hohfeldian incidents H.

There is a clear path forward how we might derive a scalar concept of legitimacy from this starting point. If legitimacy is conceptually a bundle, then there seem to be *smaller* and *bigger* bundles, relative to some scale. Thus, we might suggest:

Being legitimate to a higher degree means possessing a *bigger* bundle of Hohfeldian incidents H.

The crucial question is what it means for a bundle to be *bigger*. Specifically, an institution might hold the same incident against *more people* (call this *width* scalarity) or it might hold *more incidents* against the *same* person (call this *depth* scalarity). We might also think that some incidents are "stronger" than others (call this *weight* scalarity). These three proposals, and attempts to combine them in some fashion, will occupy us for the rest of the paper.

Width Scalarity

The core idea behind width scalarity is that an institution's greater legitimacy consists in it having the right to rule over *more people*. Some remarks from Charles Larmore suggest that he sees width scalarity as one aspect of a scalar concept of legitimacy.⁸ Put formally, we might advocate:

WIDTH. Being legitimate to a higher degree means possessing the right to rule over more people.

WIDTH, however, is on its face implausible. It suggests that the United States is more legitimate than Germany, because the former (rightfully, we can presume) rules over more people. Germany, in turn, would be more legitimate than Sweden and so forth.⁹ A more charitable way to understand this proposal is to think of legitimacy not in terms of absolute numbers of people ruled over, but in relative terms. In other words:

WIDTH*. The more an institution is legitimate, the more people it rightly rules over, set in proportion to the amount of people it *de facto* rules over.

Thus, for example, we might say that the United States enjoys less legitimacy than Norway, because the United States has the right to rule over fewer of the people

⁸ Larmore claims that legitimacy is a matter of degrees (2020, pp. 118–119), and that this "point holds [...] for all three aspects of the concept of legitimacy" (ibid.). These aspects are "with what right the state may exercise coercive power", "into what areas of social life it may justifiably extend its reach", and "over which people it rightly has jurisdiction" (ibid., p. 42, cf. pp. 69, 86). This section discusses scalarity in the third aspect, the second will be discussed in sect. "Reach and Impact". It is unclear how the first aspect could be developed into a scalar account of legitimacy, but it might point in the direction of impact-on-reasoning proposals (sect. "Impact on Reasons").

⁹ Let me make an important methodological remark. I offer various counterexamples throughout this paper. As we are concerned with the concept of legitimacy, it does not matter whether you share the intuitions appealed to (e.g., that Germany is not less legitimate than the US). What matter is that you find it *conceptually possible* that the intuition is correct.

under its *de facto* jurisdiction. To use imaginary numbers, perhaps the Norwegian state rightfully rules 90% of its population, while the American state only rightfully rules 80% of its population. This, then, would mean that the former is more legitimate than the latter.

Still, WIDTH* is dubious. First, you can always improve a ratio by decreasing the denominator. Thus, institutions could increase their legitimacy if they stopped exercising power over some people. Consider the possibility, for example, that the American government does not legitimately rule over certain Americans living in extreme destitution (Shelby 2007). On WIDTH*, the US government has two ways to increase its legitimacy in this situation: one, by improving its moral relations with the residents of the ghetto (increasing the numerator); or two, by stopping to exercise *de facto* power over them (decreasing the denominator). For example, the American government could denounce its sovereignty over majority-black areas and declare them outside the jurisdiction of the United States. On its face, however, this looks like a tremendous, morally dubious shirking of responsibility—if anything, a decrease, not an increase, in legitimacy.

Second, to apply WIDTH*, we need some prior account of who government "rules over". This might look like a technical problem, but is far from trivial to resolve. Take, for example, the issue of unilateral border control (Abizadeh 2008). One might claim that governments exercise power over foreigners, insofar as they unilaterally control their own borders. This would entail that the legitimacy of states is measured, to a large degree, by the justifiability of their interactions with foreigners. Perhaps this is the correct view to take, but it is highly controversial. Other accounts will specify much more narrowly who a government "rules over". Either way, it seems we must decide rather difficult, non-trivial normative questions before we can get WIDTH* to work.

Even if we accept that the interactions of states with foreigners matters to their legitimacy, there is an intuitive sense that their interactions with insiders matters *more*, because the power of states over insiders is normally much more impactful. To illustrate, take the Internet Corporation for Assigned Names and Numbers (ICANN), which regulates domain names and IP ranges on the internet.¹⁰ Assume that ICANN does, as a matter of moral fact, have the right to rule all internet users. Thus, we could conclude, ICANN has a very high degree of legitimacy, as it permissibly rules over both many people (WIDTH) and everyone it *de facto* rules over (WIDTH*). But it strikes me as odd that we can derive this result merely from these two pieces of information.

The general shortcoming, I suspect, rests on the fact that it not merely matters *how many* people (absolutely or relatively) some institution rules over, but also *how impactfully* it rules over them. No amount of tinkering with the details of width-based proposals can fix this basic fault.

¹⁰ I owe this example to Hilbrich 2024, p. 46.

Depth Scalarity

While width scalarity focusses on how many people an institution has the right to rule over, depth scalarity focusses on how "deep" its right to rule goes with respect to the ruled. There are different ways how we could specify the notion of depth. We could understand it in a purely *numerical* fashion: someone has a deeper right to rule against someone insofar as one has *more* rights to rule over them, perhaps relative to some list. Alternatively, one might understand it in a *categorical* fashion: someone has a deeper right to rule insofar as one has rights of a specific *type*. Neither proposal, as we will see, works.

The first, simplest proposal is the following:

size. The more legitimate a political institution is, the more incidents to rule it possesses (over a given person).

This proposal, however, founders on the basic problem that there is no determinate way to count Hohfeldian incidents. Hohfeldian rights are rights to actions and actions can be individuated with arbitrary degrees of grain. If you have a right to ask a favour from your friend, then you have a right to ask a favour from your friend on Tuesday at 3 pm, a right to ask them help you paint your wall at 3 pm, a right to ask them to help you paint your east wall yellow at 3 pm on Tuesday, and so forth. There is then no natural answer to the question how many rights you have. Similarly, any attempt to count the number of ingredient components in the right to rule are doomed to fail, as there is no privileged way to count and individuate rights.

One might hope to overcome the problem by providing a pre-individuated list of component incidents in the right to rule. Imagine a long questionnaire: "does this institution have the right to raise taxes?", "does this institution have the right to jail criminals?", "does this institution have the right to exclude individuals from its territory?", and so forth. Relative to some such list L, we might propose:

LIST. The more legitimate a political institution is, the more incidents to rule from L it possesses.

There are several problems with LIST. First, we must draw up the contents of the list in a non-arbitrary way. It is difficult to see how this could be done. Remember, in particular, that any list we draw up must be neutral between competing theories of the grounds of legitimacy. Second, we have merely pushed the problem of individuation up one level. Should, for example, the right to tax appear as one generic right on our list, or as multiple more specific rights (to tax wage income, to tax capital income, to tax inheritances, etc.)?

Even if we can draw up a list which overcomes these problems, we run into the problem that different items on the list possess different weight. The right to impose the death penalty seems weightier than, say, the right to fund the arts. I suspect that LIST in this respect suffers from the same fundamental problem as SIZE: no mere counting of rights to rule, whether against a fixed list or not, reveals sufficient information to adjudicate how legitimate an institution is. We need some sense of the "weight" of the right to rule—a class of proposals I turn to in the next section.

One might object, however, that both LIST and SIZE allow at least some ordinal comparisons.¹¹ If, for example, relative to some list or individuation of rights, institution A possesses the rights to rule R_A , and institution B possesses R_A and additional rights R_B , then we can deduce that B is more legitimate than A. While correct, this leaves scalar approaches rather powerless. We could only compare institutions if one of them possessed *precisely the same* rights, or the *same and more*, as the other. If A possessed merely a single incident that B did not possess, we no longer could relevantly compare them.¹² But I assume that proposals for a scalar conception of legitimacy have more ambitious hopes than yielding such limited ordinal comparisons.

Another attempt to circumvent some of these problems focusses on different *types* of Hohfeldian incidents. In particular, some authors suggest that the degree of legitimacy of an institution can be determined by how far it ascends in some hierarchy of rights, normally a relatively short one. We find, for example, a distinction between "minimal", "intermediate", and full legitimacy (Christiano 2008); between "weak", "modest", and "strong" legitimacy (Edmundson 1998); and between "minimal" and "full" legitimacy (Morris 2005; cf. Ypi 2020). Formally, we might advocate:

TYPE. There is an order of Hohfeldian types of rights $R_1, R_2, ..., R_n$, such that the degree of legitimacy of an institution consists in the highest type of right it possesses in this order—e.g., an institution possessing R_3 (and none higher) has legitimacy of the third degree, and an institution possessing R_2 (and none higher) has legitimacy of second degree.

A standard way to construct TYPE is to put a mere liberty-right to coerce at the bottom of the scale, a claim-right against interference in the middle, and finally, a power-right to make law (or perhaps a claim-right to demand obedience) at the top of the scale.

However, TYPE suffers from its own weaknesses. First, it only allows for *n* degrees of legitimacy (or n+1 if no legitimacy counts as a degree of legitimacy). Perhaps a three-level account might allow us, for example, to distinguish the legitimacy of non-democratic non-liberal regimes from the legitimacy of democratic liberal regimes.¹³ But the attraction of scalar language is its ability to allow finer grains of judgement. We want to make comparisons between liberal democracies, for example, or track the legitimacy of the same liberal democracy over time. Two or three tiers of legitimacy are insufficient for this purpose.

Moreover, TYPE suffers from the same general problem with which I diagnosed SIZE and LIST: it tries to derive a graded notion of legitimacy from purely formal analysis, but it is unlikely that this is sufficient to do the job. In formal terms, for example, a power-right is not "more" of a right than a liberty-right: all Hohfeldian

¹¹ I owe this objection to a blind reviewer.

¹² We assume here that we have agreed on some way to individuate rights such that comparisons become possible.

¹³ Cf. Rawls's attempt to classify different types of states (Rawls 1999).

incidents are equally rights (cf. Kramer 2019). The idea that possessing a powerright contributes more to legitimacy than a liberty-right likely comes from an implicit assumption that the former is more *important* or more *powerful* in some sense. However, this means that we have moved, if subtly, beyond a mere depth proposal, and instead to a weight proposal.

Weight Scalarity

The width and depth proposals suffered from being overly formal attempts to determine what it means for an institution to have greater legitimacy. But, one might suggest, this ignores other ways how we might get to scalarity. Roughly, we might think, an institution is more legitimate if it has rights to rule of greater *weight* over its subjects. To approach the idea intuitively, I might have a claim-right to harvest the apples from your apple tree. This, however, is clearly a less weighty right then, say, a right to dispose of your life savings. In this section, I discuss several approaches how one might specify the idea of a "weighty" right.

Reach and Impact

One weight-based idea comes again from Larmore, who mentions that one "aspect" of legitimacy is its reach—how many "areas of social life" a political institution can justifiably regulate (Larmore 2020, pp. 42, 106). This suggests:

REACH. The more an institution is legitimate, the more areas of social life it can justifiably reach into.

There is a danger, however, that REACH again devolves into a mere counting proposal (like SIZE OT LIST), and then suffers from its attendant problems. Contrast two institutions. The first government has the right to fund operas, protect endangered birds, provide non-binding guidelines for school curricula, and regulate a host of other trifling matters. The second institution has the right to sentence murderers and apply the death sentence, but no other rights. On its face, the first institution reaches into more "areas of social life", while the latter is confined to only one. We should not think of the former as more legitimate, however, at least not as a matter of conceptual truth.

To resolve this issue, we can recast REACH in terms of greater impact:

IMPACT. The more an institution is legitimate, the greater the impact it can permissibly have on the lives of individuals.

This would deal with the previous counterexample. Administering the death penalty certainly has a greater impact than protecting birds. However, IMPACT is still subject to important counterexamples. In particular, some institutions are designed for narrow purposes, but this does not diminish, at least conceptually, their legitimacy. The International Tribunal for the Law of the Sea (ITLOS), as its name suggests, deals with a narrow set of issues in international law. I also

presume that this reflects a normative reality: ITLOS has the *right* to rule, if only over a narrow set of legal issues. This allows us to say, *on a merely conceptual basis*, that ITLOS possesses a low degree of political legitimacy. However, ITLOS has been generally held as a success story, and thought to be highly normatively legitimate. In short, while ITLOS has only a limited right to impact individuals and states, its legitimacy is high.

Consider another example: on any reach-based or impact-based proposal, federalizing or decentralizing a system of government always means a *decrease* in the legitimacy of the central government, while inversely centralization always means an *increase* in its legitimacy, as in the process the central government loses (or gains) some rights to rule. (We are assuming that all the rights to rule the central government *de facto* possesses it is also justified in possessing). We can know this not just as a substantive moral point, but on a conceptual level!

Moreover, impact-based proposals can suffer from an overly narrow focus on coercion. One paradigm way in which governments affect us is by coercing us, or threatening to coerce us, as well as by giving and taking away various freedoms, rights, goods, resources, and opportunities. The question of legitimacy still arises, however, for institutions which do not act in a primarily coercive fashion (Bird 2014). Again, an international court such as ITLOS, or ICANN, provides useful examples. The primary function of these institutions is coordinative and adjudicative; neither directly coerces. Instead, the primary mode of operation of these institutions is based on their law-making and regulative functions. A focus on "impact" is likely to make us underestimate the degree of legitimacy these institutions have.

Another worry is that IMPACT fails to be normatively neutral. Imagine that you have a rights-based moral theory on which there are various constraints on what governments can permissibly do. These constraints could be very severe, as for example in a right-libertarian view (e.g., Nozick 1974). On IMPACT, this would entail that the *more* constraints there are, the *lower* the *maximum* degree of political legitimacy any political institution could enjoy. Thus, it would be a conceptual truth that, on a right-libertarian view, governments cannot be as legitimate as on, say, a consequentialist view. Perhaps this is an acceptable implication, especially given that our conceptual intuitions in this area might be unreliable. Still, it seems odd that we can know this as a conceptual truth.

Relativizing to Purposes

One strategy to overcome these issues is by relativizing IMPACT, and similar proposals, to the claimed remit (or purpose, function, etc.) of an institution.¹⁴ Along these lines, consider:

IMPACT*. The more an institution is legitimate, the greater the impact it can permissibly have on the lives of individuals, *relative to its purpose*.

¹⁴ I am grateful to two blind reviewers for pushing me to elaborate on this view.

This aligns with general proposals that legitimacy is relative to some purpose or function (Adams 2020; Hilbrich 2024), which I cannot discuss at appropriate depth. Let me make only two objections, which conjunctively also represent a dilemma.

First, the purpose of an institution could be determined on the basis of moral theory: the purpose of an institution is the role that it *ought* to play. This would help us answer, for example, the objection that maximum legitimacy would be limited under libertarianism. The libertarian could then say that an institution is maximally legitimate if it fulfils all the functions that it ought to play, even if those are limited to the night-watchman state's.

However, this interpretation creates a new problem, in that our concept of legitimacy ceases to be neutral between competing moral theories. Imagine, by contrast, that one regards the purpose of the state as implementing the Rawlsian principles of justice. This would then make it a conceptual truth that a perfect Rawlsian state is legitimate, and a conceptual truth that a perfect right-libertarian state is *not* fully legitimate. The Rawlsian and the libertarian would fail to have a shared concept of legitimacy.

Alternatively, IMPACT* could be specified on the basis of a non-normative reading of institutional purposes and functions. The purpose of ITLOS, for example, is to regulate the international law of the sea. We could then say that ITLOS is legitimate relative to this function: it could possess a high degree of legitimacy even if its absolute impact was marginal compared to that of other institutions.

The problem with this version of IMPACT* is the interpretative difficulties concerning what the purposes of institutions are. Even if we can relatively easily identify the purpose of highly specialized institutions such as ITLOS and ICANN, what is the purpose of (say) the state? It is very hard to come by anything resembling an informative answer, I suspect, which does not smuggle normative commitments back in. Moreover, consider the Marxist claim that "the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie" (Marx and Engels 1976, pp. 110–111). This is not a normative claim, but an interpretive claim about the actual function of the state; moreover, it is obviously controversial, insofar as many theorists will disagree with it. However, if we cannot agree on the function of the state, and the concept of legitimacy is tied to function, then we can also not agree on the concept of legitimacy. A Marxist and a non-Marxist would then not even talk about the same property when they talk about the state's legitimacy.

Impact on Reasons

Perhaps it is insufficient, as IMPACT and IMPACT* suggest, to primarily focus on "how much" an institution is permitted to do to us. Perhaps it also matters that, if it affects us, how it affects our *practical reasons*. Thus, we might say the people or states ITLOS affects have *very strong reasons*, perhaps reasons that outweigh a great number of competing considerations, to adhere to its rulings. One proposal along these lines can be found in Martí, who offers the following suggestion:

The right to rule might be correlated to a general duty of respecting legitimate institutions that may instantiate with different intensities, depending on how close we are from ideal legitimacy. The more legitimate an institution is, the greater respect we owe to it. And this may instantiate, gradually, by adding different concrete duties—acceptance of punishment in case of disobedience, non-interference, and obedience—as we approach the ideal. (Martí 2017, p. 735)

There are two suggestions we can glean from Martí: one, that we have more duties towards more legitimate institutions; another, that we have duties of increasing intensity towards more legitimate institutions. A related proposal is made by Andrea Sangiovanni, who writes:

an institution's *degree* of legitimacy is both a function of the breadth of the reasons it excludes within a given domain (relative to other similarly situated authorities) and the weight of the reasons generated (relative to those considerations that are not excluded). (Sangiovanni 2019, p. 15; emphasis in original)

Sangiovanni also mentions that degrees of legitimacy might consist in a greater intensity of duty. The second, novel suggestion latches onto the possibility that duties express themselves as exclusionary reasons, and can exclude more or fewer first-order reasons.

Setting their differences aside, these proposals share a focus on the *impact* on the reasons of the addressees of political power. The idea is that more legitimate institutions change our reasons in more impactful ways—by giving us more duties, or stronger duties, or duties excluding more competing considerations. Thus, we can discuss them together as sharing the same foundational idea, while ignoring the specific detail. A first formulation might be the following:

REASONS. The more an institution is legitimate, the greater its potential impact on the *practical reasons* of its subjects.

It is worth clarifying that we are interested in the *potential* impact that an institution has on our practical reasoning. After all, institutions might refrain from exercising (some of) their law-making powers, but this does not diminish their legitimacy. Thus, for example, one state might allow consuming marihuana while another prohibits it. But this is no diminishment of the former's legitimacy, as long as it would have the moral and legal *power* to prohibit marihuana if it so chose, and thereby would bring about the relevant changes in the rights and duties of its subjects. Analogously, IMPACT was phrased in terms of the *permissible* impact of political institutions, not their *actual* impact.

There is certainly something intuitive about REASONS. In the epistemic realm, someone who is a greater expert on some subject matter is not as easily disbelieved as someone who is less competent. Similarly, we might think, some institution which is more legitimate is not as easily ignored in our practical reasoning as some institution which is less legitimate. REASONS is subject to a general class of counter-examples, however. Take, for example, a morally dubious state which takes decisive (and, we can stipulate, morally appropriate) action in response to a global pandemic.

This state's pandemic policies have a great moral impact on its subjects' practical reasoning. But they have this impact because they trigger various pre-existing moral duties, not because the state has any specific claim on its subjects to rule them—in particular, the state has no authority (Brinkmann 2018, 2020). The state's intervention is morally appropriate simply because it would be appropriate for anyone to act under such circumstances. For example, because everyone has moral duties to not endanger others by spreading highly contagious diseases, everyone should comply with various, sometimes rather strict, legal measures. Thus, if the morally questionable state issues necessary but strict quarantine requirements, its citizens will have a duty to comply with them, greatly changing how they should act. Thus, according to REASONS, this government's legitimacy increases.¹⁵

I regard this upshot—that the legitimacy of a dubious state increases in the face of a pandemic—as counterintuitive. But one might object that a government which rises to an unforeseen challenge thereby increases its legitimacy, at least relative to a government which does not.¹⁶ In response, we can observe that the morally dubious state *gains no new rights to rule*. The dubious state had no claims to obedience before, and it has no claims to obedience now. It had no special rights to exercise power before, and it has no special rights to exercise power now. At most, it has a general right—a right that *anyone* has in such a situation—to engage in certain protective activities.¹⁷ But if this state gains no new rights, then it cannot be said to have increased its legitimacy—this is a minimum necessary condition on a Hohfeldian scalar conception.

In general, if we endorse REASONS, the legitimacy of an institution rests no longer primarily on features intrinsic to the institution, but varies primarily with extrinsic features. If external conditions change such that we are more reliant on the services of a coordinating institution, that institution's legitimacy increases; if those conditions relax, its legitimacy decreases.

To see this issue more clearly, we must carefully distinguish the impact that an institution has on the practical reasoning of its subjects *because of its legitimacy* (i.e., its specific bundle of rights to rule) and the impact it has *through other channels*. Someone who holds a gun to your head and demands your money has a great impact on your practical reasoning, but not because of any right to rule over you. Similarly, someone who implements a local neighbourhood watch might have an impact on your rights and duties, but they do not have this impact because of any right to rule over you; they have this impact because of their beneficial effects. It is useful to distinguish in this context between the *direct* and *indirect* moral effects of an institution.¹⁸ Even institutions entirely lacking the right to rule have indirect effects on the practical reasoning of subjects—for example, we might have a duty to comply with the traffic laws of an otherwise morally despicable regime.

¹⁵ An analogous case could also be made against IMPACT, as it would also seem that a government acting in a pandemic has greater permissible impact. This suggests another way in which our formulation of IMPACT is likely incomplete.

¹⁶ I owe this objection to a blind reviewer.

¹⁷ In Simmons's terminology, the government was justified, but not legitimate (Simmons 1999).

¹⁸ For the indirect effects of legitimacy, see e.g. Enoch 2014.

Thus, even though there are great *indirect* effects on the practical reasons of subjects in the case of a pandemic, this does not increase the *direct* effects the institution's commands have. Put differently, while there are more reasons to *comply* with the law during a pandemic, there are not more reasons to *obey*—that is, to act in accordance with the law *merely because it is the law*. Thus, it seems, a more careful statement of REASONS would be as follows:

REASONS*. The more an institution is legitimate, the greater the *direct* potential impact *of its right to rule* on the practical reasons of its subjects.

However, REASONS* suffers from its own problems. In particular, it is unclear whether REASONS* is neutral between competing theories of legitimacy. Some views argue that all or most effects of political power on our practical reasoning are indirect (Brinkmann 2020, 2024, chap. 2). On these views, then, all institutions would possess an equally *zero* (or close-to-zero) degree of legitimacy according to REASONS*. We might think, for example, that political institutions work as salient coordinators in society-wide coordination dilemmas which merely trigger various pre-existing duties that citizens already possess (Garthoff 2010). Many natural-duty accounts of legitimacy might take such a stance, or could be interpreted along such lines. Moreover, any theorist who denies that we have general duties to obey our governments seems to deny that there are (great) direct effects of the right to rule (e.g., Smith 1973). Thus, such views would conceptually entail, according to REASONS*, that political institutions possess a low, or even no, degree of legitimacy.

The problem here is not that some theories of the grounds of legitimacy yield the upshot that many institutions possess a low (or even zero) degree of legitimacy. This is an unproblematic possibility and would not conflict with REASONS*. The problem is that REASONS* commits us to a specific and controversial metaphysical account of how legitimate institutions operate—i.e., by directly giving us reasons, rather than indirectly providing them.

In short, REASONS suffers from locating the legitimacy of an institution in extrinsic features that do not seem to correspond with newly gained rights to rule. On the other hand, REASONS* commits us to a specific account of how political institutions exercise their authority that we might find problematic. This does not mean that either option should be rejected outright, but there are at least some non-trivial conceptual complications that both accounts bring up.

Value and Agency

The impact-on-reasoning proposals focussed on the impact of the right to rule on the practical reasons of the ruled. But political institutions are also normally agents, even if of an unusual kind. Thus, we might also focus on what the right to rule does *for them.* We might think, in particular, that the *weight* of a right consists in the *value* for its holder. We might make the following proposal: VALUE. The greater legitimacy of a political institution consists in the greater total value of the bundle of rights to rule it possesses.¹⁹

However, VALUE remains severely underspecified as long as we do not have a notion of what makes a right valuable. Economic measurements of a right's value—such that "how legitimate is France?" devolves into "what is the monetary value of the right to rule the populace of France?"—look like non-starters. Similarly, axiological notions do not seem to carry us far. It is unclear what it would mean for a right to rule to be "good"—good *simpliciter*, that is.

A more promising account would understand value to be what is good *for the ruler*, where what is good for someone need not be read in narrow prudential terms. One possibility, for example, is that rights are linked to agency (Griffin 2008). On this reading of VALUE, rights are valuable because they protect agency—the ability to set one's own plans, having the capabilities and resources to effectively pursue those plans, and not being constantly blocked or impeded in these pursuits. This would then give us:

AGENCY. The more legitimate a political institution is, the more its bundle of rights to rule promotes and protects its agency.

The core intuition behind AGENCY is that political institutions are agents,²⁰ and that their agency can be valued more or less. Political institutions whose agency we value more are rewarded with more robust sets of rights to rule, without this translating in any mechanical way into "bigger" bundles of rights or specific components in the right to rule.

This account is still rather underdeveloped, and substantially more work would need to be done to sketch out the details. Nonetheless, it suffices to identify several worries with AGENCY, and also the wider proposal VALUE. First, if the point of a definition is to break down an opaque notion into simpler, better-understood components, then this definition does not seem to be particularly successful. Instead, we seem to have moved on to a novel set of rather opaque and controversial philosophical concepts.

Second, I suspect that the more detail we fill in to make AGENCY more precise, the more we run into the problem I noted in the beginning (sect. "The Grounds, Concept, and Effects of Legitimacy"): AGENCY starts to look more like a substantive moral commitment rather than an account of the concept of legitimacy. Not every-one will agree, for example, that rights are based on agency; their grounds might rest on interests instead. AGENCY would thus commit us to a substantive theory about the nature of rights. But we are in search of the concept of legitimacy, which is supposed to be neutral between competing substantive accounts of the grounds of legitimacy.

This point can be driven home if we consider purely instrumentalist accounts of legitimacy, on which legitimacy is based exclusively on achieving important

¹⁹ The total value of a bundle of rights might not be the sum of the values of the individual rights in the bundle, but we can set the issue aside.

²⁰ On the idea that group agents like states have agency, see Applbaum 2019; List and Pettit 2011.

benefits, such as distributive justice or aggregate welfare (e.g., Arneson 2003; Brinkmann 2024). On these accounts, there is never any intrinsic value in the agency of a political institution. But then it would seem that AGENCY definitionally rules out a major class of theories of legitimacy, which it should not do.

Hybrid and Contextual Proposals

There are two further families of proposals, which exist in a perpendicular fashion to the views we have so far discussed. First, one might attempt to construct a convincing account of scalar legitimacy by combining two or more of the proposals we have discussed. Call these *hybrid* (or *pluralistic*) approaches. The second option is to abandon the search for a universal account of degrees of legitimacy, and instead construct measures of scalar legitimacy for a limited range of political institutions. Call these *contextualist* approaches. I will offer a few critical comments regarding both views.

Hybrid Proposals

Hybrid proposals combine two or more of the proposals we have discussed. One might combine, for example, a width with a weight proposal. A hybrid proposal is advocated by Larmore, who claims that the scalarity of legitimacy shows itself in each of three "aspects" of legitimacy (Larmore 2020, p. 42). There is a nearly endless set of combinations that could constitute a hybrid view. Thus, I will offer only some general scepticism about the chances of success of such views, without pretending to have disproven them all.

First, hybrid views must give us some account of how competing dimensions of scalarity are to be weighed against each other. This is not a trivial matter, as we are comparing metaphysically rather different categories. How are we to compare, for example, that one institution rules over more people (greater width) with another institution yielding more impactful duties (greater weight)? We need to make the different dimensions of scalar legitimacy commensurable; but I suspect that this will turn out to be a rather difficult philosophical task.

Second, hybrid approaches must show that their proposed combination of proposals overcomes, instead of inherits, the problems that each individual proposal suffered from. It is not clear, for example, why adding a depth-based notion to a width-based notion cures either of the problems it suffered from. Moreover, we need a principled philosophical motivation for combining several different notions into a hybrid account. But what intuitively motivates the various proposals might not be easily compatible with each other. For example, impact-on-reasoning proposals might be motivated with a concern for "noumenal power" (Forst 2015), while impact-based proposals might be motivated with a concern for coercion.

Contextualist Approaches

A contextualist approach, on the other hand, claims that different notions of scalar legitimacy are appropriate in different contexts. Thus, perhaps, a width-based notion is adequate in one context, an impact-on-reasoning notion in another, and some hybrid notion in yet another. There is good precedent for this approach. Some accounts of the binary concept of legitimacy, for example, explicitly limit themselves to accounts of *state* legitimacy (Copp 1999), or distinguish "internal" from "external" legitimacy (van der Vossen 2012; Sreenivasan 2024). Similarly, perhaps a successful account of scalar legitimacy can be given with more limited explanatory ambitions.

Lucia Rafanelli, for example, asks when the intervention in a state's internal affairs by external agents is justified. She deals with the objection that any interference with a legitimate state is impermissible, because legitimacy entails a right against interference. She responds by claiming that legitimacy has two dimensions:

outsiders to a legitimate state ought to (1) grant it authority to decide and implement policy within its jurisdiction [...] and (2) grant (or at least not deny) it "good standing" in the international community. (Rafanelli 2021, p. 117)

Rafanelli suggests that the two conditions come in degrees (Rafanelli 2021, pp. 142–144), such that states have varyingly strong claims to domestic authority and good standing in the international community.

One could read Rafanelli to provide an ambitious, general definition of scalar legitimacy. But more naturally, her proposal is read to apply in the context of the specific problem she is considering. Whether her account of scalar legitimacy is generalizable, then, remains an open question, and it would not be an objection if it could not be.

There are, on closer inspection, two types of contextualist approaches. The one approach, which we might call *scope-limited*, limits itself to a specific *type of insti-tution*—e.g., only to states, or to liberal democracies, or to international courts. Scope-limited contextualism, then, aims to provide an account of the *all-things-con-sidered* scalar legitimacy of one *specific class* of institutions. To use an analogy, a scope-limited ranking of wines might limit itself to comparing only rosés, or only French whites, or only dry German Rieslings.

Partial accounts, on the other hand, aim to provide an account of *one aspect of* the scalar legitimacy of political institutions, not necessarily limited to a specific class of institutions. Perhaps, for example, we compare different institutions with respect to their "external" legitimacy, or their "democratic" legitimacy, or some such. Similarly, a partial ranking of wines might compare them with respect to their fruitiness, their ability to impress your guests, the quality of their bouquet, etc., while avoiding an overall judgement which wines are better or worse all-things-considered. Contextualist accounts, of course, might be *both* scope-limited and partial. To stay with our analogy, we might compare only French whites with respect to their bouquet, and reject any wider comparisons.

As with hybrid approaches, an almost infinite variety of contextualist approaches can be imagined. There is no *a priori* reason to think that specific

contextualist proposals could not be made to work. Moreover, contextualism in its scope-limited version accords well with the independently plausible suggestion that legitimacy might be a family resemblance concept (Brinkmann and Wibye 2023). According to this view, we call different political institutions "legitimate" even though they have radically different bundles of the right to rule. The rights to rule a liberal-democratic state enjoys *vis-à-vis* its citizens present one particular constellation we call "legitimacy"; the rights to rule an international court enjoys another; the rights an UN-appointed caretaker government enjoys another; and so forth. It would then only be natural if the analogous property of scalar legitimacy turned out to be a family-resemblance concept, picking out several, but not necessarily compatible, notions for different types of institutions.

With respect to contextualist approaches, I suspect that the devil is in the details. Focus on scope-limited contextualism first. For such an account, the relevant class of institutions to which it limits itself needs to be *natural* and cannot be *too small*. On the first requirement, we should not offer an account which is only applicable to a very gerrymandered class of institutions, as this would hardly inspire confidence in the explanatory power of the approach. On the second requirement, the class of institutions for which we offer an explanation cannot be too small, or it would hardly be practically useful. We would need an account of a reasonably broad class such as "state legitimacy" or "legitimacy of an international organization", or some such.

Moreover, many of the objections I have offered against various proposals also apply to their scope-limited cousins. For example, the objections against widthbased proposals still apply even if one limits oneself to states or international institutions. (The same is likely true of depth-based accounts.) Limiting the scope does not overcome the principled objection I offered against such proposals, namely, that it does not merely matter how many people some institution rules over, but how intensely.

Partial contextualist approaches, on the other hand, run the danger of failing to realize the supposed benefits of a scalar notion. That benefit, after all, was to allow us to make judgements about which institution is more or less legitimate than another. On the partial account, however, we can only compare institutions in specific respects. Sometimes, when the practical question we are interested in is clear, this might be unproblematic, if it is obvious what comparative aspect we are interested in. But this avoids the hard cases, where we do not immediately know which measure is relevant. Moreover, often we will want to form all-things-considered judgements of scalar legitimacy, which a partial ranking by definition cannot provide.

Concluding Remarks

Let us take stock. While many authors claim that legitimacy is scalar, there are few worked-out proposals; moreover, the proposals we have disagree with each other, and it is not even clear whether all are offered as accounts of the concept of legitimacy, rather than its grounds or effects. Thus, a precise notion of scalar normative

legitimacy, appropriate for philosophical analysis, does not yet exist. In this paper, I systematized and explored various options, but found them all wanting or incomplete. I do not wish to overstate the result: none of the criticism I offered points to insurmountable obstacles. Nonetheless, it is clear that non-trivial philosophical work is required in constructing the concept.

Let me highlight some limitations of the paper in closing. First, this paper has operated against the undefended background of a Hohfeldian analysis of the concept of legitimacy, in line with the mainstream approach one can find in the literature. One might wonder, however, whether non-Hohfeldian approaches might prove capable of overcoming the criticism I offered. Amanda Greene, for example, has offered a conceptualization of legitimacy which is more closely modelled on descriptive accounts of legitimacy (Greene 2019). Whatever the strengths or weaknesses of that approach, they are likely to be different from those I highlighted in this paper.

Another limitation is that I have said little about the grounds and effects of legitimacy. Scalarity is likely to occur here as well—indeed, this might be one motivation for turning to a scalar account of the concept in the first place—and so we might wonder what scalarity "in grounds" and "in effects" looks like. Moreover, we might wonder how scalarity along these other two dimensions lines up with scalarity in legitimacy (e.g., is it a linear relationship?). Exploring these issues, however, would likely require us to develop a more all-encompassing account of legitimacy far beyond the constraints of this paper.

Lastly, I have proceeded on the assumption that we need a scalar account of legitimacy. But perhaps this is an incorrect methodological assumption. Perhaps a binary conception of legitimacy could fulfil all, or most of, the required theoretical and practical functions. Alternatively, we might think, a scalar approach might still prove to be too oversimplified. Instead of simplifying legitimacy to a one-dimensional measure, why not work directly with the decomposed blocks out of which legitimacy is constituted, that is, the Hohfeldian incidents of which the right to rule consists?

Alas, I do not have the space to adequately discuss these issues, although I think they are pertinent questions we should ask whenever a scalar account of legitimacy is proposed. Instead, let me reiterate what I take to be the paper's main result: at least for the time being, the burden of proof lies with the defenders of scalarity to show that a theoretically fruitful account of degrees of legitimacy can be constructed successfully. As long as no such account exists that overcomes the problems highlighted in this paper, philosophers should avoid any careless talk of degrees of legitimacy.²¹

Funding Open Access funding enabled and organized by Projekt DEAL.

Open Access This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line

²¹ I am grateful to the reviewers of this journal for helpful comments.

to the material. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit http://creativecommons.org/licenses/by/4.0/.

References

- Abizadeh, Arash. 2008. Democratic theory and border coercion no right to unilaterally control your own borders. *Political Theory* 36 (1): 37–65.
- Adams, N.P. 2018. Institutional legitimacy. Journal of Political Philosophy 26 (1): 84–102.
- Adams, N.P. 2020. Legitimacy and institutional purpose. Critical Review of International Social and Political Philosophy 23 (3): 292–310.
- Altman, Andrew, and Christopher Wellman. 2009. A liberal theory of international justice. Oxford: Oxford University Press.
- Applbaum, Arthur Isak. 2019. *Legitimacy: The right to govern in a wanton world*. Cambridge, MA: Harvard University Press.
- Arneson, Richard. 2003. Defending the purely instrumental account of democratic legitimacy. Journal of Political Philosophy 11 (1): 122–132.
- Barnett, Randy. 2004. *Restoring the lost constitution: The presumption of liberty*. Princeton, NJ: Princeton University Press.
- Besson, Samantha. 2009. The authority of international law: Lifting the state veil. *Sydney Law Review* 31: 343–380.
- Besson, Samantha, and José Luis. Martí. 2018. Legitimate actors of international law-making: Towards a theory of international democratic representation. *Jurisprudence* 9 (3): 504–540.
- Bird, Colin. 2014. Coercion and public justification. *Politics Philosophy & Economics* 13 (3): 189–214.
- Brinkmann, Matthias. 2018. Coordination cannot establish political authority. *Ratio Juris* 31 (1): 49–69.
- Brinkmann, Matthias. 2020. Legitimate power without authority: The transmission model. *Law and Philosophy* 39 (2): 119–146.
- Brinkmann, Matthias. 2024. An instrumentalist theory of political legitimacy. Oxford: Oxford University Press.
- Brinkmann, Matthias, and Johan Vorland Wibye. 2023. Towards non-essentialism: Tracking rival views of legitimacy as a right to rule. *Oxford Journal of Legal Studies* 43 (3): 497–519.
- Buchanan, Allen. 2010. The legitimacy of international law. In *The philosophy of international law*, ed. Samantha Besson and John Tasioulas, 79–96. Oxford: Oxford University Press.
- Buchanan, Allen. 2019. The complex epistemology of institutional legitimacy assessments, as illustrated by the case of the international criminal court. *Temple International & Comparative Law Journal* 33 (2): 323–339.
- Christiano, Thomas. 2008. *The constitution of equality: Democratic authority and its limits*. Oxford: Oxford University Press.
- Cibik, Matej. 2024. Tacit consent and political legitimacy. *European Journal of Political Theory* 23 (3): 340–358.
- Copp, David. 1999. The idea of a legitimate state. Philosophy & Public Affairs 28 (1): 3-45.
- Edmundson, William. 1998. Three anarchical fallacies: An essay on political authority. Cambridge: Cambridge University Press.
- Enoch, David. 2014. Authority and reason-giving. Philosophy and Phenomenological Research 89 (2): 296–332.
- Estlund, David. 2008. *Democratic authority: A philosophical framework*. Princeton, NJ: Princeton University Press.
- Forst, Rainer. 2015. Noumenal power. Journal of Political Philosophy 23 (2): 111–127. https://doi. org/10.1111/jopp.12046.
- Franck, Thomas. 2000. Legitimacy and the democratic entitlement. In *Democratic governance and international law*, ed. Gregory Fox and Brad Roth, 25–47. Cambridge: Cambridge University Press.

- Galoob, Stephen, and Stephen Winter. 2019. Injustice, reparation, and legitimacy. Oxford Studies in Political Philosophy 5: 65–89.
- Garthoff, Jon. 2010. Legitimacy is not authority. Law and Philosophy 29 (6): 669-694.
- Greene, Amanda. 2016. Consent and political legitimacy. Oxford Studies in Political Philosophy 2: 71–97.
- Greene, Amanda. 2019. Is political legitimacy worth promoting? Nomos 61: 65-101.
- Griffin, James. 2008. On human rights. Oxford: Oxford University Press.
- Hall, Edward. 2015. Bernard williams and the basic legitimation demand: A defence. *Political Studies* 63 (2): 466–480.
- Hilbrich, Sören. 2024. On legitimacy in global governance: Concept, criteria, and application. Cham: Springer.
- Hohfeld, Wesley Newcomb. 1919. *Fundamental legal conceptions, as applied in judicial reasoning.* Ed. Walter Wheeler Cook. New Haven: Yale University Press.
- Jackson, Vicki. 2018. "Constituent power" or degrees of legitimacy? ICL Journal 12 (3): 319-344.
- Keohane, Robert. 2003. Political authority after intervention: Gradations in sovereignty. In *Humani-tarian intervention: Ethical, legal and political dilemmas*, ed. J.L. Holzgrefe and Robert Keohane, 275–98. Cambridge: Cambridge University Press
- Kirshner, Alexander. 2018. Nonideal democratic authority: The case of undemocratic elections. Politics, Philosophy & Economics 17 (3): 257–276.
- Kramer, Matthew. 1998. Rights without trimmings. In A debate over rights, ed. Matthew Kramer, Nigel Simmonds, and Hillel Steiner, 7–112. Oxford: Clarendon Press.
- Kramer, Matthew. 2019. On no-rights and no rights. *The American Journal of Jurisprudence* 64 (2): 213–223.
- Larmore, Charles. 2020. What is political philosophy? Princeton, NJ: Princeton University Press.
- List, Christian, and Philip Pettit. 2011. Group agency: The possibility, design, and status of corporate agents. Oxford: Oxford University Press.
- Martí, José Luis. 2017. Sources and the legitimate authority of international law: Democratic legitimacy and the sources of international law. In *The Oxford handbook of the sources of international law*, ed. Samantha Besson and Jean d'Aspremont, 724–745. Oxford: Oxford University Press.
- Marx, Karl, and Friedrich Engels. 1976. Manifesto of the Communist Party. In *Selected works*. Vol. 1. Moscow: Progress Publishers.
- Mason, Andrew. 2007. Public justifiability, deliberation, and civic virtue. Social Theory and Practice 33 (4): 679–700.
- Mason, Andrew. 2010. Rawlsian theory and the circumstances of politics. *Political Theory* 38 (5): 658–683.
- Morris, Christopher. 2005. Natural rights and political legitimacy. *Social Philosophy and Policy* 22 (1): 314–329.
- Nozick, Robert. 1974. Anarchy, state, and utopia. New York: Basic Books.
- Peter, Fabienne. 2023. The grounds of political legitimacy. Oxford: Oxford University Press.
- Pettit, Philip. 2012. On the people's terms: A republican theory and model of democracy. Cambridge: Cambridge University Press.
- Rafanelli, Lucia. 2021. Promoting justice across borders: The ethics of reform intervention. Oxford: Oxford University Press.
- Rawls, John. 1999. The law of peoples. Cambridge, MA: Harvard University Press.
- Reglitz, Merten. 2015. Political legitimacy without a (claim-) right to rule. *Res Publica* 21 (3): 291–307.
- Sangiovanni, Andrea. 2019. Debating the EU's raison d'être: On the relation between legitimacy and justice. Journal of Common Market Studies 57 (1): 13–27.
- Shelby, Tommie. 2007. Justice, deviance, and the dark ghetto. *Philosophy & Public Affairs* 35 (2): 126–160.
- Simmons, John. 1999. Justification and legitimacy. Ethics 109 (4): 739-771.
- Sleat, Matt. 2014. Legitimacy in realist thought: Between moralism and realpolitik. *Political Theory* 42 (3): 314–337.
- Smith, M.B.E. 1973. Is there a prima facie obligation to obey the law? *Yale Law Journal* 82 (5): 950–976.
- Sreenivasan, Gopal. 2024. Three concepts of legitimacy. Oxford Studies in Political Philosophy 10: 1–27.

Stilz, Anna. 2019. Territorial sovereignty. Oxford University Press.

Tesón, Fernando. 1998. A philosophy of international law. Boulder, CO: Westview Press.

- van der Vossen, Bas. 2012. The asymmetry of legitimacy. Law and Philosophy 31 (5): 565-592.
- Wendt, Fabian. 2019. Rescuing public justification from public reason liberalism. Oxford Studies in Political Philosophy 5: 39–64.
- Ypi, Lea. 2020. Democratic dictatorship: Political legitimacy in Marxist perspective. European Journal of Philosophy 28 (2): 277–291.
- Zhu, Jiafeng. 2012. Legitimacy as a mere moral power? A response to Applbaum. *Diametros* 33 (33): 120–137.
- Zurn, Christopher. 2010. The logic of legitimacy: Bootstrapping paradoxes of constitutional democracy. *Legal Theory* 16 (3): 191–227.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.