The Concept of Legitimacy

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What does it mean for something to be legitimate? Although the idea of legitimacy is commonplace and political philosophy takes state legitimacy in particular as one of its central concerns, the concept of legitimacy has received little attention. In this article I propose a new understanding of the concept of legitimacy (LEGITIMACY).[1]

I begin by explaining a function that we need a concept to serve in social practices (Chalmers 2011). This is the function of identifying entities that we should treat as belonging to the practice and appropriately orienting our actions towards them. I call this the 'gatekeeping' function. Following the suggestive work of Buchanan (2013) on political legitimacy, I argue that LEGITIMACY serves the gatekeeping function. My proposal then shapes the concept so that it can perform the gatekeeping function well.

It makes sense that not much theoretical attention has been paid to LEGITIMACY if it is a gatekeeping concept: gatekeeping is only important insofar as the gated practice is important. It is natural to focus our theoretical and practical attention on the ultimate goals and values of the practice and not the merely enabling conditions. However, as I explain below, no practice can function without performing this gatekeeping function. Understanding it helps us understand particular practices, some of their faults, and the structure of social life more generally.

The concise version of my proposal is that an entity is legitimate when it counts as an occupant of a particular role within a social practice and so has the associated normative status.[2] If sufficient people use LEGITIMACY in this way and also accept the normativity of the practice in question, then their behavior will enable that practice to function. This proposal about the meaning of LEGITIMACY is therefore revisionist in nature. I do not claim that this is what we all mean right now each time we employ LEGITIMACY in our everyday language. Instead, my claim is that using LEGITIMACY in the way I propose would better serve its function. I take this to be a project of conceptual engineering and conceptual ethics (Burgess

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[1] Following a convention, terms in small caps refer to the concept itself.

[2] I use the neutral 'entity' to capture the range of things to which social practices assign roles (and status). The primary case is individuals but 'entity' also covers other agents (groups), mere subjects (dogs), objects (stop signs), events (recessions), ideas (theories) and actions (voting), among others.

and Plunkett 2013a; 2013b). That said, I also think that we often use LEGITIMACY in this way and that recognizing this would help clarify some substantive debates about legitimacy.

Adopting my proposal would give our shared use and assessment of legitimacy claims more precise foundations. Our current usages of LEGITIMACY tend to be vague, interchangeable with other concepts like JUSTIFICATION, or underspecified. I take greater precision to be especially important for theorizing the legitimacy of increasingly varied entities. For example, state legitimacy has received immense amounts of theoretical attention but the contemporary shift to theorizing the legitimacy of international political institutions has been difficult. It is not clear whether LEGITIMACY means the same thing when applied to such institutions, whether they should have the same standards for legitimacy as nation-states, and so on. A more general understanding of LEGITIMACY helps us address such issues.

Here's the plan. In the first section I explain the gatekeeping function and why it is necessary for social practices. In section 2, I argue that LEGITIMACY plausibly serves the gatekeeping function and I consider some implications. In section 3, I apply my proposal to political legitimacy, arguing that it clarifies some disagreements about state legitimacy and some of the issues raised when we shift attention away from the state, to other kinds of political legitimacy. I conclude by addressing some potential concerns, including that LEGITIMACY means something much broader, akin to JUSTIFICATION.

1. The Function

We begin with an inquiry into a concept's function. As Chalmers (2011: 538) puts it, 'instead of asking "What is X?," one should focus on the roles one wants X to play and see what can play that role.' In the conceptual engineering project as I understand it, a concept's function is its social function. It is based on questions such as, 'If scientists used PISCIS specified in this way, would it advance scientific inquiry?' or 'If we used WOMAN specified in this way, would it help us address gender-based oppression?' (Novaes 2018; Haslanger 2012). We want to know what the world looks like when a community takes up a shared meaning and employs the concept in a specified way or, as I will say, when it is used in a shared discourse. What good does it do a community to use this concept rather than getting along without it or using it in a different way (Williams 2002; Fricker 2007)?[3]

The general function of normative concepts is to organize and direct our actions. Different normative concepts do so in different ways with respect to different domains. For example, Waldron (2003: 271) argues that 'principles of justice have a specific role to play in social theory, which has to do with the distribution of individualized benefits and burdens.' The domain of JUSTICE is the distribution of benefits and burdens. In the same vein, the

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[3] The community in question could be a technical community of experts or it could be broader publics.

domain of virtue and vice concepts is character traits, the domain of RIGHTS is deontological relations, and so on. A theory of LEGITIMACY should tell us the function it performs by explaining how it governs our actions and in what domain.

I proceed in two stages. In this section I show that social practices need to perform the gatekeeping function, distinguishing role occupants from each other and from non-occupants. I argue that this is done by the application of normative status through the creation and assignment of roles within the practice. In the next section, I argue that LEGITIMACY should serve this function.

Our focus is on social practices in the broad sense of a regularized pattern of behavior that is the result of people conforming to behavioral standards or norms.[4] Although details vary, starting from something like this broad sense of social practice or institution is commonplace (e.g. North 1991; Tuomela 2002; Searle 2010). Our concern is often for the patterned behavior but it will also help to consider sets of norms as potential, inchoate, or imperfectly realized social practices.

Practices coordinate (in a non-technical sense) behavior by applying various norms to entities within the practice.[5] Primary among these entities are persons who count as participants in the practice. When participants share a significantly overlapping sense of what the norms require of them and accept that they should abide by the norms, they will generally act according to the norms in similar ways. (Here I leave aside the question of why participants are motivated to follow the norm, which will widely vary, including internal acceptance of the norm and appreciation of external incentives.) The resultant consonant behavior characteristically aims at some goal or end. In this sense, social practices are teleological, although not in the sense of being intentionally created to pursue an end (Miller 2010).

The assignment of shared norms gives participants a common standard. Without shared norms, individual actions would be very unlikely to overlap in any interesting way; even if the actors all intentionally pursued a shared goal, conflicting individual judgments about how to proceed would lead towards haphazard and often contradictory behavior. The practice would not be able to succeed and, in a significant sense, would not exist without participants feeling bound by and sharing in an understanding of the relevant norms.

The most basic practice might only distinguish between participants and non-participants and may only direct participants to act in one way but most practices involve a variety of participant types that are assigned (and partly defined by) complex collections of

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[4] Participants may endorse the norms or simply believe that others endorse them (Bicchieri 2016).

[5] Practices in my sense need not be collective or joint activity. Bathing is a social practice when people tend to agree and follow roughly the same cleanliness norms although the activity of bathing is mostly individual. Still, the outcome is roughly and non-technically coordinated levels of cleanliness.

norms. What I call an entity's normative status is the complete set of norms that apply to it. Primary among these are the deontic incidents, including duties, claim-rights, and powers. Social practices function by assigning statuses to participants.

The social practice of the university pursues its goal of advancing understanding by assigning a certain status to professors that gives them duties to teach classes, conduct research, evaluate students, and so on. It assigns a distinct but complementary status to students, who must attend class, submit work, and so on. In order to succeed, the practice must carefully define participants' relations to one another and the participants must accept those norms as appropriate guides to their behavior. The same is true of book clubs and mosques and etiquette. Or consider a more informal practice like the nuclear family, with the roles of parent and child, each having its own kind of standing with respect to one another. In some versions, further distinctions among roles are made, for example between mother and father. Within the practice, entities (especially people) are assigned a status that defines how they relate to others.

Most social practices function by having a diversity of statuses. Such diversity allows the assignment and coordination of distinct tasks and so division of labor. In some cases, such diversity of statuses is not only more efficient but conceptually necessary to achieve the goals of the practice. This might be because the good being pursued is necessarily social and relational in nature or because the task is beyond the scope of an individual's capacities healthy. This characterization fits our more complex social practices but it may seem out of place for simpler ones. It may also seem out of place for more egalitarian practices, where part of the value is precisely that all participants have the same status. My local book club may have only one status, member, and we may all share equally in the responsibilities thereof. However, the single status still plays the critical function of distinguishing participants from non-participants. Without this distinction the practice will not be able to function. Even in the limit case where all persons or all considerable beings are assigned the same status, the practice will rely on distinguishing the considerable from the non-considerable. Human social practices all rely on the distinctions between participant and non-participant.

Social practices need to coordinate behavior in order to operate. But why think this can only be done by the assignment of status? This potential objection rests on a misunderstanding of status. No practice needs to use any specific terminology. The technical language of deontic incidents can more precisely characterize status but is ultimately only describing relationships between entities and the various ways they can interact within the practice. If a participant faces some choice and an option is not forbidden to them by the practice, it can be helpful to define that option precisely as a permission. The language describes the relationships; what social practices need to do is define (often not very precisely) those relationships.

Perhaps the objection is not to the language being used but the very idea that the relationships need defining. Note that defining needn't mean codifying; law is an extreme

example of explicit and written codification but many social practices rely on less formal ways of defining relationships within the practice. The relevant contrast case is a complete lack of shared understanding about how participants in the practice should act. The result of this will be failure to attain (or even pursue in any robust sense) the good in question. This is because, as noted above, people will act in contradictory, undermining, irrelevant ways without their relations being sufficiently ordered. In that case there is not even a coherent thing that we could call a social practice—there is no behavior recognizably patterned by shared norms.

We have established that social practices must assign status to participants to operate. Social practices primarily assign status is by defining roles (or position), which include an associated status but also additional elements that explain how roles contribute to the practice. Strictly speaking this need not be part of the gatekeeping function; in principle a social practice could operate by directly assigning a bundled status or even by piecemeal norm application. Social practices employ roles because, among other things, this would be very inefficient and difficult to operate. My proposed meaning of LEGITIMACY frames legitimacy in terms of role occupation.

Participants' roles have already been central to my examples, including professor, student, parent, child, club member. Importantly, a role is more than a mere title for some status.[6] The role can survive through changes in individual elements of status; this is not only a descriptive fact but a desirable feature of the role as a functional unit within a social practice. We can use our understanding of the role as a whole to critique the elements of status that it currently has, grounding claims for improvement by updating the status. We aren't making a new role but making the role a better version of itself. The role takes on a life of its own. Whether professors should have the protections of tenure, and what exactly those protections should amount to, is a debate that relies on the fact that we understand the role of professor and the purpose of being a professor independently of what status elements the role currently includes in a particular practice.

Although roles do not merely name a status, status is still central. The role is partly constituted by its status. Part of what it means to be a parent is to have certain responsibilities, the abandonment of which calls into question one's position as a parent. In practices operating well, a role's status will be defined so the role successfully does its part in the practice. Roles also standardly include ideals. Status mostly defines boundaries and possibilities but doesn't tell us where to aim within those bounds. Ideals help us more robustly define the role beyond its boundaries and should direct the role to play its part as well. Parents have some responsibilities that act as minimum requirements; a good parent meets loftier ideals directed at successfully raising children. Various ideals of character and so on will tend to accumulate into our understanding of the role.

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[6] Similarly, my notion of a role is not Searle's status function Y term. [Acknowledgement removed for anonymous review.]

We have reasons to expect that roles would become independently important. As Ritchie (2018) points out, roles reduce cognitive load, especially in more complex and larger social practices. Instead of needing to know the details of each element of status and the persons who have them, we can focus on the roles. Roles also reduce social load: when we set appropriate criteria on role occupancy, we can trust that role-occupants will play their part without needing to base our trust on our personal familiarity with particular participants or on a norm-by-norm basis. This is also important for the persistence of well-functioning social practices across time and through changes of membership. Roles are an indispensable and independent part of social practices.

Social practices successfully coordinate behavior when participants take up roles and conform their actions to the norms and ideals associated with the roles. The differentiation between roles and role occupants is crucial, even at the most basic level of distinguishing participants from non-participants. If we treat non-participants as participants or if we treat one role occupant as if they occupied a different role, the social practice will not be able to function. To be clear, then, what I am calling gatekeeping is not only distinguishing between insiders and outsiders but occupying different internal positions. Social practices require a way to identify role occupants and thereby get behavior to align with the role-associated status.

2. Connecting to Legitimacy

Cast at this level of generality, it is clear that social practices perform the gatekeeping function in a wide variety of ways. More formalized and codified practices, for example organizations, will often have explicit identifiers of role occupancy, for example records, contracts, and identification badges. My claim is that legitimacy discourses also, not solely, perform the gatekeeping function. Recall that we are setting aside the question of how social practices get people to conform to their norms. This is independent from however the gatekeeping function is performed. If nobody cares (or is forced to care) about the practice, they will not conform their behavior to the role-associated normative status identified by the gatekeeper, whether that is done by engaging in a discourse or carrying a badge.

It is clear that applying certain concepts actually performs the gatekeeping function. On campus, students will often learn that I am a professor because they are present when another student calls me professor. I don't need my identification card in that case, let alone my employment contract; a shared PROFESSOR discourse does gatekeeping work in that context. Applying the title identifies me as occupying that role and structures how others who accept the discourse treat me. The interesting question is not whether employing a concept can serve the gatekeeping question. With LEGITIMACY in mind, the interesting question is why there should be an additional and apparently very general concept that serves this function across social practices. If PROFESSOR already does this work on campus, what does it add to ask whether someone is a legitimate professor?

There are many contexts in which a community would employ a more general concept to perform the gatekeeping function. The more general gatekeeping concept is helpful when there is some sense that the entity occupies the role (they're a professor) but also some question of whether they meet some associated but more stringent standards. There is a divergence in standards for role occupancy that allows for this question to be sensible. The divergence leads to disagreement and thus the utility of a more general gatekeeping concept that allows us to better ask and answer the question of role occupation. When we see that the conditions for divergence in standards are common, indeed pervasive, then we see why a more general gatekeeping concept is helpful. We should expect such persistent disagreement because role occupancy often confers some advantages, while meeting the conditions for occupying the role involves some costs, so there are incentives to occupy the role without meeting the conditions.

First, consider three contexts in which disagreement will arise with respect to codified practices like the university or other legally instituted organizations. The most obvious case is where an entity occupies a role as a matter of fact but there is some question as to whether they gained the role fraudulently according to the codified standards. Brian Kemp is the current governor of Georgia but his opponent Stacey Abrams and many commentators question his legitimacy as governor because they questioned whether the election was fairly run. Someone who appeals to the fact that he was sworn into office is missing the point of the inquiry; given the purposes of elections, governing, and so on, someone should only have the status of governor under certain strict conditions that the practice details. Sometimes the office can be attained without the conditions being met.

This straightforwardly points to another context of disagreement. Once roles, standards, and so forth have been codified, they also become static to some degree. As participants engage in the practice, though, they will be interested in how the practice should improve, perhaps for example by better pursuing its constitutive aims. This creates the space for a more normative, critical discourse surrounding role occupants that abjures the current descriptive elements of the practice precisely because those elements are the subject of critique. It may be uncontested that the governor gained the office according to the relevant procedures but if they use the office in ways that contradict the point of the practice or the purpose of the role, or if the extant selection procedures undermine that purpose, then the question of their legitimate occupancy arises. If Kemp won under current election law but that law unjustly restricts voting rights, then he may be illegitimate despite occupying the role by following extant procedures. We may decide that the occupant is illegitimate and decline to treat them according to their role's status while we pursue ejection procedures.

Relatedly, social practices often embed. It is common for fans to debate whether a college football win, or season champion, is legitimate. The question here isn't whether the win was a win according to the rules (although that question can also be raised in the context of cheating, as above). The question is whether the win meets further, more robust conditions that show the win to be indicative or constitutive of superior skill. If the point of

the season is to recognize the best team, then often merely counting formal wins won't do because of confounding issues like strength of schedule, opponents' injury status, and so on. The codified practice generates a subpractice that shares a constitutive goal but by necessity cannot use the same language of role occupancy. Any practice can generate subpractices in this way (including subpractices themselves); adding new terms for each role in each subpractice would be confusing, given the pervasiveness of practices, but is also unnecessary if we have the more general gatekeeping concept.

Distinct practices often use the same term for a role because the practices are related; they may also share conditions such that it is obvious that the entity occupies one role but not another. Consider the notion of a legitimate child. The role 'child' occurs in many distinct but overlapping social practices. The duke's daughter whose mother is not the duke's wife is his child in a biological sense but is not a legitimate child in that archaic sense connected to the marital status of her parents and related to certain practices of inheritance. She's his child, but is she legitimate? The practices share the term so the term's discourse can't serve the gatekeeping function very well. The more general concept allows us to retain the specific conceptual overlap but identify that we have questions about normative status within the more narrow practice, in this case involving inheritance rather than biology.

Disagreement also arises much more easily and commonly in uncodified practices. Lack of codification can include all features of the practice, including the procedures for occupying the role, what norms and ideals attach to the role, how to assess role occupancy or role performance, what ousting would look like, who the relevant participants to make these judgments are, the purpose of the role in the practice, the relations between roles, the overall goal and nature of the practice, and so on. When these features are not codified, asking whether an entity occupies a role leads to problems of misidentification or disagreement over identification of role occupancy in a way that is mostly not salient with codification. (Indeed, I take codification to be largely about overcoming such obstacles.)

If these disagreements occur only by asking whether an entity occupies the role, they take on a descriptive appearance. In fact, however, these disagreements are often normative: they are not about what the practice is but what it should and could be (Plunkett 2015). The features that can be uncodified, listed above, can also be vague and contested: there's no obvious true answer about what the conditions are for occupying a role or what those conditions should be, given contestation about the goals of the practice itself, how the roles function together, and so forth. So, these debates are often better framed (though not necessarily resolved) in a more obviously normative manner, which the more general concept enables. Applying the more general gatekeeping concept helps clarify that the question is not just whether they have the title but whether they are due the treatment the associated normative status demands.

These contexts are not exhaustive. If role occupancy can be easily faked, for example, then the opportunity for disagreement arises. However, I take my point to have been made. Social practices need the gatekeeping function to be performed and concepts can be used to

raise and debate the question of role occupancy. Specific role concepts can perform this function but so can more general concepts. The more general gatekeeping concept is especially useful when disagreement about standards for role occupancy arises, as it often does, and so directly using the title disguises the underlying dispute and undermines the point of engaging in a critical inquiry.

As the above examples show, LEGITIMACY is a plausible candidate for the concept that serves the general gatekeeping function. Here, then, is the gatekeeping account of LEGITIMACY. When we ask whether an entity legitimate or illegitimate, we are concerned with whether it counts as occupying some role in a social practice. To be legitimate is to occupy a role within a social practice and therefore have, among other things, the status associated with that role. Consequently, to say that A is legitimate is always to implicitly say that A is a legitimate *x*, where *x* picks out a role within a social practice (as opposed, for example, to a natural kind): 'legitimate' and 'illegitimate' are attributive, not predicative, adjectives (Geach 1956). An entity cannot be legitimate *simpliciter*—although we can make sense of such assessments when the entity essentially occupies a role or the context makes the relevant role clear.

As gatekeepers, legitimacy assessments can perform at least three different functions. The one I've emphasized so far is to distinguish potential from actual role-occupants, or between fake and genuine participants. This contrast between fake and genuine is often characteristic of legitimacy judgments and can arise with respect to any entity in a practice, including an object that has an associated status in the practice. A legitimate iPhone is a product of the company Apple; an illegitimate iPhone looks like the real product but is not produced by Apple and so is a fake, a knock-off. The role in question is being a certain product of an organization, which confers a status that, for example, entitles the owner to assistance from Apple under certain conditions. The knock-off might include a copy of the iPhone warranty but Apple isn't required to cover the knock-off precisely because it is illegitimate so does not have the relevant status.

Another function is to clearly distinguish the more restricted question of which entities count in the practice from more robust assessments. Gatekeeping is about entry, not excellence.[7] A legitimate argument is not necessarily valid or sound but is the appropriate object of assessment in argument terms. The social practice is about making claims in a certain manner. To be a legitimate argument in this context is to be a participant in the practice of attempting to make claims in that manner and being evaluated according to the relevant standards for making such claims. An invalid, unsound argument is still an argument, just a bad one.[8] An illegitimate argument doesn't even get into the game of being

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[7] Though, as noted above, to better focus on excellence we might engage in a subpractice that sets more stringent standards of entry for consideration.

[8] An implication is that you can implicitly legitimate something by critiquing it according to role-specific standards; even if your critique is correct, you presuppose that it meets the entry requirements on the role because it is an appropriate subject of the higher role

assessed on grounds of validity or soundness; it does not pass the entry gate. An ad hominem claim doesn't need to be shown to be false because that would treat it as an argument, which it is not. It is an illegitimate argument because it is an attack.

Similarly, a legitimate question deserves serious consideration and some kind of response, if not a full answer. That's the practice the utterance is trying to enter. It can be an illegitimate question despite being a question as a matter of linguistic form and use. An illegitimate question does not get into the question game: it is not due serious consideration or response. This could be because of the content of the question, the context of utterance, the nature of the speaker or her audience, or much else. Something rules out illegitimate questions from consideration; the assessment is not about quality but aptness.

Finally, a general gatekeeping concept enables us to more clearly raise the possibility of meta-gatekeeping.[9] We already noted that it allows us to ask not only whether an entity meets the extant standards for role occupation but what those standards could and should be. We may also ask what standards we have for standards, or how we solve the higher-order debates about standards. This question is pressing given the pervasiveness of social practices and roles in our lives. It would be incredibly costly to relearn and renegotiate individual gatekeeping discourses for each one; better if we can share a meta-gatekeeping discourse.

In fact, I think most meta-gatekeeping in our everyday lives is not done by legitimacy discourses but by legality (cf. Habermas 1996).[10] The state sets minimum standards for various kinds of social entities to receive the support, or at least the non-interference, of the public. Legal gatekeeping is done by more than just a shared discourse of LEGAL, of course: the state notably literally polices the boundaries of legality, using coercive force, threats, and shared sentiment to disable and prevent illegal entities. Instead of needing each citizen to know and participate in the development of standards for what sorts of speech we should allow in the public sphere, and what kinds of contract, and which grocery stores, and what land use rules, we have a higher-order practice that precisely establishes and enforces standards for participating in our public, including standards for meta-gatekeeping itself. Subpractices and their associated gatekeeping practices are then relevant, enabling as individuals and different kinds of communities to apply their own standards and choose among the legal options.

3. Political Legitimacy

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standards it doesn't meet.

[9] Here I'm inspired by Buchanan's (2013) notion of metacoordination.

[10] Among other differences, my proposal is more ecumenical; Habermas' analysis rests on the details of his wide-ranging theory of communicative action. [Acknowledgement removed for anonymous review.]

It will help to see how my proposed understanding applies to political legitimacy. First, the contrast between LEGITIMACY and JUSTICE is explained very well if the two perform different functions in political social practices; the former performs a gatekeeping function while the latter performs the function of purpose or ideal. Second, debates about political legitimacy are illuminated when understood in terms of debates about the role that particular institutions should play and the nature of the social practices they inhabit.

Some important ways in which LEGITIMACY differs from JUSTICE are explained by the distinct functions they perform in the context of the state. Rawls (2005, 428) notes that "legitimacy is a weaker idea than justice and imposes weaker constraints." Similarly, "A significant aspect of the idea of legitimacy is that it allows a certain leeway in how well sovereigns may rule and how far they may be tolerated" (Rawls 2005, 427). Rawls' political turn arises from his recognition that there will be reasonable disagreement about his theory of justice and that legitimacy serves a different function (Langvatn 2016). Freeman (2007, 325) shows that for Rawls, LEGITIMACY is "especially important under non-ideal conditions."

As the gatekeeper, LEGITIMACY concerns itself with minimal standards for counting as a state and deserving a certain status; by contrast, states are striving towards and may not reach JUSTICE as a regulative ideal. We need states to function even under radically non-ideal conditions and even when they are rather profoundly unjust—taking seriously the costs to human well-being if we fall out of organized political community. So LEGITIMACY discourses will need to enable states under non-ideal conditions by holding states to standards that are achievable under those conditions. As such they will be weaker conditions than the requirements of justice and they will account for more radical disagreement. Under non-ideal conditions, the focus will often shift to legitimacy rather than justice precisely because the more stringent standards are, for the moment, out of reach. State legitimacy is about the core functionality of states because LEGITIMACY performs the gatekeeping function. A well-functioning state might go far beyond legitimacy and serve functions that a weaker or less reliable state should not.

Some of the debates about political legitimacy are clarified when understood as concerning the nature of the social practice that states are embedded in and their role in that practice. Williams and Rawls understand the relevant social practice differently. Williams (2005, 3) proposes that the Hobbesian role of the state is "the securing of order, protection, safety, trust, and the conditions of cooperation." In contrast, Rawls (2005, 3) asks what terms should be set on a system of fair cooperation among free and equal participants. Both focus on cooperation but Rawls takes for granted certain stipulations that shape the rest of his theory. Williams' realism forces him to address political realities that Rawls ignores because they take themselves to be addressing different social practices altogether. Of course they disagree about the standards of legitimacy and what claims legitimate states have. Legitimacy standards can only be drawn from some understanding of the embedding social practice and how the entity's role fits into that broader picture.

Rawls' theory looks notoriously different when he shifts to international relations. In

my view, this difference is explained by the fact that he is considering the state in a new practice: as a participant in the Society of Peoples rather than as the determinant of the terms of cooperation for individuals. As Rawls (1999, 83) notes, "How peoples treat each other and how they treat their own members are, it is important to recognize, two different things." The differences between the practices, including the stakes, the level of disagreements, history, their respective constitutive purposes, and much else, lead him to weaken the standards for participation. If I am right about LEGITIMACY serving the gatekeeping role within particular social practices, we have an explanation (if not a justification) of this shift. Rawls does not frame his inquiry as concerning legitimacy but it is clearly about gatekeeping the practice of international relations by setting minimum standards for peoples to meet in order to count as full participants. From my perspective, the difficulty is that the state plays different roles in different practices but we want to synthesize the different legitimacy assessment we make of the state.

Political legitimacy for institutions other than the state, for example supranational institutions like the European Union or international law, looks very different because the social practice is also different. Philosophers are aware of these differences and are attempting to work out their implications; if international courts operate in a voluntary, treaty-based practice, then the standards of legitimacy are very different than if they operate in a compulsory or coercive practice (Christiano 2019). The nature of these issues is clarified with a unified background theory of LEGITIMACY as performing the gatekeeping function for social practices.

Some of the nuances of these debates also fit my proposal well. Christiano's discussion, for example, is partly about how international courts are in a different practice than domestic courts. But in both cases, courts play similar roles: they are only courts because they adjudicate cases, for example. Further, as Christiano emphasizes, the international context is still a political context. This means that some features of domestic court legitimacy will be applicable to international court legitimacy. Concerns about rule of law, especially consistency across cases, motivate Christiano's investigation into whether the limitations on the International Criminal Court's jurisdiction undermine its legitimacy.

I argued above that LEGITIMACY is best understood as concerning role occupation rather than the direct assignment of status. This is a case where we see that in practice. The social role of a court can be partly understood independently of any specific social practice. Simultaneously, the details of a court's particular practice also matter for its legitimacy because it has to serve some purpose in that social practice and the pursuit of that practice's constitutive aims. And as with states, the issue is whether the court should have the basic status of a court: the normative powers to decisively adjudicate cases for parties. Christiano notes many ways that the ICC is non-ideal but the question is whether the problems of jurisdiction matter for its ability to conduct itself as a court at all. The question of the ICC's legitimacy is an entry-level, gatekeeping question that is relative to the practice it occupies a role within but informed by courts' functions more generally.

Finally, many discussions of political legitimacy focus on moral legitimacy. There is an obvious sense in which such questions could be about a social practice in the sense of the positive morality of a particular social group. But most of the time, these discussions are asking about morality in a more normative manner. This is still consistent with my view. We are asking whether some entity meets the standards drawn from our best understanding of, or the truth about, morality as a distinct normative domain; if the entity meets the standards, then it has the associated moral status and stands in certain moral relationships with others. We may attempt to answer these questions from the perspective of the practice of morality in its best form, even if that is not its currently accepted form in some specified group. This is the set of norms that we think should pattern our behavior even if does not now, and so we can use such norms in our legitimacy assessments as well.

4. Alternatives

In this final section I address two potential alternatives to my proposal. It has been suggested to me that LEGITIMACY means something thin like JUSTIFICATION or VALIDITY. (As far as I know, nobody has attempted to articulate a distinct function for LEGITIMACY in the way I have here.) Perhaps to say that A is legitimate is to say that A is justified, according to some practice-relative standard. This could explain why LEGITIMACY performs the gatekeeping function but why it is also coherently in other ways. This proposal also seems to fit theories of state legitimacy that focus on the question of whether or not state coercion is justified.

A possible virtue of the alternative proposal is better fit with ordinary usage. I'm not sure that this is the case and would need to see evidence to that effect; more importantly, my explicitly revisionary proposal only requires sufficient fit with ordinary usage to ensure I am not changing the topic. Since conceptual engineering is not merely descriptive, better degrees of fit with ordinary usage are less important than other criteria.

There is no doubt that JUSTIFICATION serves some important function. The problem here is not that LEGITIMACY couldn't serve that function but that the alternative proposal renders LEGITIMACY redundant. This makes our language less useful if there is a function for LEGITIMACY that JUSTIFICATION cannot serve well. Only if all legitimacy language can be coherently understood in terms of justification would it make sense to abandon LEGITIMACY because it adds nothing except confusion. But it appears to me that JUSTIFICATION does not fit the question of social role occupation very well.

Justification is a property of intentional (though not necessarily intended) actions. It's a category mistake to claim that a hurricane was either justified or unjustified. When we ask whether an entity counts as occupying a role, we are not asking about something they have done, we are asking about what they are or, more accurately, what relationships they stand in to others. And recall that this assessment also applies to objects. Justification doesn't capture any of this well.

It's true that whether or not an entity has the status associated with the role is

relevant to many questions of justification. If the status includes some obligations, then the role-occupant is not justified in acting any other way. On the other hand, many aspects of standing are orthogonal to justification. If the status includes a power, the power-holder can exercise the power in unjustified ways. Powers confer a normative ability but do not guarantee that exercising it is always justified. We often ask the legitimacy question first precisely so that we know how to answer questions of justification.

Perhaps the issue could be whether we are justified in treating entities as role-occupants. But this is simply distinct from whether they are role-occupants and these questions come apart. In the case of illegitimate social practices, we are unjustified in treating those entities that are role-occupants from a perspective internal to the practice in the ways that their status would demand.[11] In the mob, nobody is all-things-considered justified in obeying the boss because his commands entail egregiously wronging others, even though it is true that he is the legitimate boss, a role as defined within the practice and that includes practice-relative authority.

Perhaps the justification is about actors within the practice assigning some role and whether or not such role-assignment is justified. This kind of act can be justified or unjustified; for example, an immigration judge can justifiably or unjustifiably decide that some petitioner counts as a refugee. But most role-assignment does not happen this way. Most social practices do not explicitly define roles and criteria in the way that law does. Even in law most roles are assigned implicitly and by default, not as a matter of explicit choice. Similar concerns apply to the question of being justified in accepting a role. Although related in many important ways, a justification discourse is a poor fit for questions about the occupancy of a social role and the possession of normative status.

One source of the concern that LEGITIMACY amounts to JUSTIFICATION is the literature on political legitimacy discussed above. It is relatively common to cast questions of political legitimacy in terms of justification. Kolodny (2014: 309) sets a familiar tone according to which the question of legitimacy is whether political decisions are 'roughly, permissible to implement'. Pettit (2019: 7) similarly holds that 'the problem of legitimacy is that of morally justifying the way a state exercises monopoly power'. I agree that justification is central to state legitimacy but it is a poor fit for what state legitimacy means. Both Kolodny and Pettit, among others, slide between the normative status that a state has and the justification of particular exercises of state power. These are distinct, as both implicitly recognize. A legitimate state can act unjustifiably.

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[11] This is because the social practice in which social practices embed is something like shared social life very broadly, where the purpose of social practices is to coordinate behavior and enable the pursuit of various kinds of value, so a social practice can be illegitimate when it is harmful in the right ways. In such a case, it doesn't have the standing a legitimate social practice possesses: that the normative status it constitutively assigns via roles have some normative weight that participants and others must account for when acting.

Pettit concludes that state legitimacy rules out radical regime change as a route for political change. This is the right sort of status, ascribed to the state as a whole, and is simply different from whether the state is exercising its power well. State legitimacy and the justified exercise of political power are of course connected due to the nature of the state itself, the powers it has and the roles it plays. As Peter (2013: 599) notes, 'At the core of political liberalism is the claim that political institutions must be publicly justified or justifiable to be legitimate'. Weithman (2019: 56-7) interprets Rawls as making this connection with the view that every ordinary exercise of political power simultaneously implicates the question of the existence and standing of the political collective. Although related, political legitimacy and justifying exercises of power are not the same and reducing one to the other does not help us think through the issues.

Clarity on LEGITIMACY would help us address this and other problems in the literature on political legitimacy. For example, what is the relationship between the legitimacy of a constitution, government, state, legislative body, legislation, judicial decision, and parking ticket? They seem related—and perhaps connected to the legitimacy of supranational or local institutions as well—but it is common to mention their potential relation without even attempting to explain them. My proposal will not give an easy answer to their relation, which is surely complicated. It simply helps us understand what questions we are asking.

Another possibility is that LEGITIMACY is about valid claims, and so perhaps is the same as VALIDITY. I agree that the idea of a valid claim is at the core of legitimacy; on my construal, that is captured by the status that legitimate entities attain as occupants of their role. Often the fact that an entity is legitimate means that it has some valid claims that an illegitimate entity does not.

The problem with thinking that LEGITIMACY is merely VALIDITY is that it doesn't tell us what subset of a legitimate entity's claims are valid. Legitimacy cannot mean that the legitimate entity's claims are all valid. A legitimate argument is not necessarily sound, as noted above, and a legitimate state's laws are not necessarily just. We need some way of distinguishing which claims legitimacy makes valid (if we want to put it this way). An understanding of LEGITIMACY that equates it to VALIDITY or the standing to make valid claims cannot do this. Of course, my proposal makes a relevant distinction: a legitimate entity counts as occupying a role in a social practice, so has some status and claims that follow from the status will be valid within the practice.

Further, in the practices I mentioned above, we often employ stronger normative assessments precisely to entitle the entity to a broader range of claim-making. A sound argument entails further claims beyond legitimacy, as does the most incisive question or a fully just state. LEGITIMACY plays the gatekeeping role of identifying those entities that count as role occupants. Other normative evaluations direct the role-occupants to even better performance of their role, so in many cases gives them the standing to make a broader set of valid claims. VALIDITY is not a good fit with the gatekeeping function or the question of role-occupation and does not seem to match with how we use LEGITIMACY. There may be other

plausible contenders for the conceptual function that I've articulated. However, they are not apparent to me, presumably partly because LEGITIMACY is undertheorized so nearby possibilities have not been identified and defended.

In sum, I proposed that LEGITIMACY is our general gatekeeping concept. Using LEGITIMACY discourses enables social practices by serving this function. From this we get a more precise understanding of LEGITIMACY: an entity is legitimate when it counts as occupying a particular role within some social practice and has the associated status. I showed how this proposal fits with many commonsense usages of LEGITIMACY. Finally, I argued that my proposal fits with the well-developed literature on political legitimacy. Using LEGITIMACY in the way I proposed would clarify debates over various legitimacy proposals and could also improve our social practices by articulating the gatekeeping function and performing it well.

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