

LEGITIMACY AS AFFIRMATION

ABSTRACT

In the political and social sciences, the idea of legitimacy focuses on the attitudes of acceptance or affirmation that citizens might express toward their state. In contrast, political philosophers are interested, not in empirical questions about whether a regime is in fact supported by its citizens, but rather on the normative justification of state power, whether a state has the moral right to rule. This paper argues that such attitudes of acceptance or affirmation have greater normative significance than most theorists have realized. Citizens who affirm a state in effect license that state to exercise its coercive power against them. Such an account is distinct from those that are rooted in consent, but it nevertheless captures some of the core concerns behind voluntarist accounts of political authority while avoiding the widespread skepticism about legitimacy with which such accounts are usually associated.

Among social scientists, the idea of political legitimacy typically focuses on the attitudes of acceptance or affirmation that citizens might express toward their state. A legitimate regime is one whose citizens have accepted, or at least acquiesced, to its rule. This kind of account has its roots in the thought of the great German sociologist, Max Weber, who suggested that states were defined by their “monopoly of the legitimate use of physical force” within their own territory, where legitimacy amounts to the fact that they are “considered to be legitimate” by their populace.¹ This Weberian account is largely empirical in nature, as it simply is or is not the case that citizens have this attitude of support for their regimes. It is very different from the one with which most contemporary normative political philosophers are concerned. These theorists are more interested in the *moral* justification of coercive political power. Traditionally, this normative understanding of legitimacy refers to a state’s right to rule, a right that correlates to citizens’ political obligations to obey the law. Such accounts of legitimacy, of course, vary quite a bit. What they share, however, is a worry that a Weberian attitudinal approach ignores the deepest moral questions surrounding the exercise of

¹ “Politics as a Vocation,” in H.H. Gerth and C. Wright Mills’s (eds.) *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1958), p. 78.

political power. After all, a regime can win the support of its citizens in any number of ways, and the mere fact that citizens affirm a regime says very little about the moral appropriateness of its rule.

This paper argues that thinking about legitimacy in terms of the support or affirmation that citizens might have for their state has greater normative import than most liberal political philosophers have recognized, and will defend an account in which it is the source of a state's moral right to rule. The core idea is that a certain kind of affirmation can create political obligations and so grant a state the right to exercise coercive power against its citizens. When citizens have this attitude, they affirm their state's right to rule and cannot coherently reject it. While such an account is theoretically distinct from consent or tacit consent accounts, it nevertheless represents a novel kind of voluntaristic theory of political obligation and legitimacy as such affirmation can only be given voluntarily. Such voluntarist theories have the attractive feature of preserving a strong ideal of individual liberty and can reconcile the coercive political power of the state with the ideals of liberty and equality. They are also thought, however, to lead inexorably to skepticism about legitimacy. This account aims to show that voluntarist ideals need not necessarily lead to such skepticism and can offer a novel way of negotiating traditional debates about legitimacy and political obligation.

I. The Traditional Concept of Legitimacy

The idea of legitimacy is particularly slippery, both because there are many disputed *concepts* in play, and because these various concepts are themselves subject to dueling *conceptions*. For some, legitimacy is largely an empirical concept, focusing on the attitudes that citizens have toward their state. Legitimacy in this sense has obvious moral significance, for a regime that lacks widespread support is likely to suffer from political deadlock, instability and possibly even violence. Further, the attitude of citizens has normative content since it includes their beliefs about the moral appropriateness of a state's rule. The notion, however, is primarily empirical in its nature as it simply

is or is not the case that a regime enjoys such widespread support. The focus is on *what* citizens believe, and the effects of such belief, not whether or not such beliefs are just, justifiable, or appropriate.

In contrast to this more empirical approach, among political philosophers the concept of legitimacy traditionally refers to the moral appropriateness of a state's rule. Because a state exercises totalizing coercive power against its citizens, the exercise of this power and the state's rule stands in need of justification. States pass and enforce laws that affect virtually every facet of life. Not just any entity is automatically entitled to command an otherwise free person and punish those who do not comply. The focus here is neither on whether a state is in fact supported by its populace, nor on the possible ill consequences of a "legitimation crisis." Legitimate states, in this sense, have the *right* to rule, the right to coercively enforce their laws.

It is a further part of this traditional understanding of legitimacy that a state's right to rule correlates to the political obligations of its citizens to obey the law. As John Simmons notes in his classic study of political obligation and legitimacy, "the problem of governmental legitimacy has also been tied to the problem of political obligation; for if no government is legitimate which does not have de jure political authority, and if having such authority consists in having the right to command and be obeyed, then only where a citizen has political obligations will his government be legitimate with respect to him."² Thus, a state's right to rule is a *claim right* that correlates to a citizen's specific obligation to obey the law. If a state is legitimate, then its citizens are under political obligations to obey and support it. On this traditional understanding of the nature of legitimacy, the state's right to rule and citizens' correlative obligation to obey are flip sides of the same coin. Legitimate states have the right to coercively enforce their laws. Citizens have a corresponding correlative obligation of obedience.

² A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), pp. 195-6.

The challenge for any traditional account of legitimacy is the apparent difficulty of explaining how it is that citizens actually come to be bound by political obligations. There are, of course, a variety of strategies for justifying political obligations, such as those that appeal to the concepts of fairness, associative ties, a natural duty of justice, or consent, but no approach has achieved any widespread support and it appears as if skepticism about such obligations is currently the dominant view.³ Given the prior discussion of the relationship between political obligation and the right of states to rule, such skepticism about political obligation also entails skepticism about legitimacy. For if state legitimacy implies a correlative obligation of obedience, and virtually no one is so obliged, then virtually no state is legitimate.

Such an anarchist position is perhaps a less revisionist claim than it might seem. It is most usually associated with the kind of voluntarism defended by John Simmons in which political obligations can only be undertaken by voluntary acts on the part of citizens.⁴ The most obvious way in which this might be done is through an act of consent, but it seems reasonably clear that virtually no one gives consent to be ruled by a state under the conditions that are necessary to make such consent morally binding.⁵ Simmons, however, does not think that the denial of political obligation and legitimacy implies that supporting one's state or obeying its laws is never morally justified. One does not need to appeal to arguments concerning political obligation to explain why a person ought

³ Christopher Morris, *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998): 214; William Edmundson, "State of the Art: The Duty to Obey the Law," *Legal Theory* 10 (2004): 215-259, p. 218; and Leslie Green, "Who Believes in Political Obligation?" in Sanders and Narveson (eds.), *For and Against the State: New Philosophical Readings* (Lanham, MD: Rowman and Littlefield, 1996), p. 1.

⁴ Simmons is usually thought of as a consent theorist, but strictly speaking, voluntarism is a more apt description of his theoretical outlook. In addition to his discussion of consent theory, Simmons also defends a voluntarist version of the principle of fairness. Such a principle represents one way in which citizens of a state could obtain political obligations, but this is a possibility that does not manifest itself in practice because, as with consent, the conditions necessary to activate consideration of fairness are absent in the circumstances that characterize contemporary political life in all but extremely marginal circumstances

⁵ See, John Simmons, *Moral Principles and Political Obligations*, pp. 57-74.

not steal or injure her neighbor. Similarly, a citizen might even have good reason to support her state, if, for example, it is just, protects human rights, or does good. Citizens might have all-things-considered reasons to support states and be glad for their existence, but they are, strictly speaking, illegitimate.⁶ As Simmons has more recently put it, states might be *justifiable* even if they are *illegitimate*.⁷

Despite these qualifications, most theorists are leery of embracing this kind of skepticism about political legitimacy. As Christopher Wellman puts it, “denying political legitimacy is a big enough bullet to bite to chip everyone’s but the anarcho-libertarian’s teeth.”⁸ There are, of course, a variety of strategies for responding to it. Some simply argue that these worries about political obligation are misplaced. Others are convinced by the arguments against political obligation, but attempt to keep skepticism about political obligation from infecting an account of political legitimacy by severing the traditional connection between these two concepts. These theorists argue that instead of being understood as a claim right that correlates to political obligations, legitimacy can be understood as a liberty right of states to exercise their coercive power against their citizens, though these citizens are not bound by correlative obligations to obey.⁹ As David Copp writes, “the idea of an *obligation* is more specialized than is necessary to capture the idea that the subjects of a legitimate state would have a moral duty to obey the law.”¹⁰ Citizens might have moral *duties* that

⁶ Ibid., pp. 196-201.

⁷ A. John Simmons, “Justification and Legitimacy,” *Ethics* 109 (1999): 739-771.

⁸ Christopher Heath Wellman, “Towards a Liberal Theory of Political Obligation,” *Ethics* 111 (July 2001): 735-759, p. 753.

⁹ See, for example, Allen Buchanan, “Political Legitimacy and Democracy,” *Ethics* 112 (July 2002): 689-719, pp. 689-703; David Copp, “The Idea of a Legitimate State,” *Philosophy and Public Affairs* 28 (1999): 3-45, pp. 10-16; William Edmundson, “Legitimate Authority without Political Obligation,” *Law and Philosophy* 17 (1998): 43-60, p. 44, 55-60; Christopher Heath Wellman, “Toward a Liberal Theory of Political Obligation,” p. 741.

¹⁰ David Copp, “The Idea of a Legitimate State,” p. 10.

demand support of the state and obedience its laws, but they do not “*owe* their obedience *to* the state.”¹¹

In any case, there are a number of hurdles to overcome for a defense of the traditional concept of legitimacy. This is especially true for a voluntarist approach. The appeal of voluntarism is its robust commitment to an ideal of individual liberty, but virtually everyone seems to agree that it can only lead to skepticism. Theorists of legitimacy then are confronted by a dilemma. They could offer an account that captures these voluntarist ideals, but which then seems to lead to the unattractive conclusion that virtually all states everywhere are illegitimate. Alternately, they could offer a more realistic account that explains the intuition that at least some kinds of states are genuinely legitimate, but abandon this strong ideal of liberty. This particular account aims to preserve this voluntarist ideal, while avoiding the kind of skepticism that is usually associated with it. It hopes to show that these worries are overblown, and that there is a kind of voluntarist account, distinct from consent theories, that can offer a successful justification for political obligations and legitimacy.

II. Legitimacy as Affirmation

This account of legitimacy as affirmation, while rooted in the normative ideals of liberal political philosophy, nevertheless begins with an understanding of legitimacy that is more familiar in empirical work on the idea. Such studies are fraught with much disagreement as to the meaning, significance and measure of the concept of legitimacy. In Weber’s work, legitimacy is understood epistemologically, as the *belief* in the proper authority of a regime. In more contemporary studies, however, the focus has broadened to include a more complex assortment of associated attitudes such as trust, support, or compliance.

¹¹ Ibid., p. 11.

Especially influential in these debates is the work of the political scientist, David Easton on the idea of *political support*. For Easton, such support refers not to overt behavior or activity, but rather “the attitude by which a person orients himself to an object either favorably or unfavorably, positively or negatively.”¹² What is relevant is the subjective evaluative attitude underlying such behavior. More specifically these political attitudes come in two distinct types. *Specific support* refers to supportive sentiments that arise from the “satisfactions that members of a system feel they obtain from the perceived outputs and performance of the political authorities.”¹³ Such sentiments are directed toward the specific policies or actions that a ruling government makes, and arise in response to self-interested rewards obtained from those in power, as when policies are enacted that directly benefit a person. In contrast, *diffuse support* refers to the positive behavior or attitudes that citizens might express toward a polity’s *underlying political system*, not simply the actions and actors who function within it. It consists in the “reservoir of favorable attitudes or good will that helps members accept or tolerate outputs to which they are opposed or the effect of which they see as damaging to their wants.”¹⁴ Thus, a person might have little specific support for a ruling regime because they disagree with its policies, while nevertheless maintaining considerable diffuse support for the underlying system of government.

The significance of diffuse support is that it is necessary to achieve lasting political stability and acceptance of a polity’s authority. As Easton writes, “no regime or community could gain general acceptance and no set of authorities could expect to hold power if they had to depend exclusively or even largely on outputs to generate support as a return for specific and identifiable benefits.”¹⁵ While such diffuse support can have many sources, the most important arises out of

¹² David Easton, “A Re-Assessment of the Concept of Political Support,” *British Journal of Political Science* 5 (October 1975): 435-457, p. 436.

¹³ *Ibid.*, p. 437.

¹⁴ David Easton, *A Systems Analysis of Political Life* (New York: John Wiley & Sons, Inc., 1965), p. 273.

¹⁵ *Ibid.*, p. 269.

normative convictions about these underlying political structures. As Easton writes, “the most stable support will derive from the conviction on the part of the member that it is right and proper for him to accept and obey the authorities and to abide by the requirements of the regime. It reflects the fact that in some vague or explicit way he sees these objects as conforming to his own moral principles, his own sense of what is right and proper in the political sphere.”¹⁶ Thus, while the focus of these theories is empirical, the attitudes in question have normative import, focusing on the conformity of institutions to “moral principles” or “what is right and proper.”

This attitude of diffuse support or affirmation then is a complex amalgam of affective dispositions grounded in normative convictions. With regard to this account of legitimacy as affirmation, three features are particularly important. First, affirmation is a kind of subjective pro-attitude, an affective disposition of support. It is not simply a belief in the truth of a claim, as when a person says that she affirms the truth of some statement. Second, while people express support for many different kinds of things, affirmation is directed towards the objects of diffuse support, the underlying political system of a state, not simply the particular political figures in power, or their policies, laws and actions. This would include the basic structures of a political system, the particular institutions that exercise legal power, including—if in a federal system—federal, state and local government, and the constitution or guiding principles that lay down the normative principles of the system. Third, while a citizen might support her state for any number of different reasons, including those of prudential self-interest, affirmation arises out of a normative conviction that this underlying political structure is “right and proper.” It is affirmed, despite disagreements over particular policies, precisely because people believe that the underlying structure of government is in accord with their own convictions about morality and the nature of justice.¹⁷ While a person might disagree with the

¹⁶ *Ibid.*, p. 279.

¹⁷ In this way, this account of legitimacy as affirmation has certain affinities to Rawls’s political conception of justice and the importance of a society’s public political culture in shaping citizens’

particular officials who are in office, they nevertheless support the underlying system of governance in which they serve.

While this particular account of affirmation has roots in the empirical study of legitimacy, it nevertheless maintains that this attitude of affirmation has greater normative importance than most liberal political philosophers have recognized, and can serve as the foundation of a moral justification for political legitimacy. But, how is it that the affirmation of a state gives it the right to rule? This might seem particularly puzzling since an attitude of support, quite unlike consent or promising, does not seem to be intrinsically rights-creating. Indeed, people express subjective pro-attitudes toward many different kinds of things—sports teams, charitable organizations, commercial brands, celebrities—but this hardly gives the objects of such support any rights against them. While it might seem hypocritical to express support for some charitable organization but fail to provide for it financially, persons who have an attitude of support for an organization do not thereby grant it the right to their money. It has no rights against them.

Affirmation, however, is importantly different, especially with regard to the object of the support. To affirm something, in the special sense under consideration here, is to express support for a system of coercive governance because it is in accord with a person's own normative convictions about justice. But to affirm something is to affirm the kind of thing that it is. It is an intrinsic part of the nature of states that they exercise the exclusive right to coercively enforce the law and to command obedience. If persons affirm their state, they affirm its rule and so grant it the authority to exercise its rule over them. To affirm a state is to give it permission to do what states do—to enforce their laws and exercise a monopoly over the morally justifiable use of force in their

views. What matters with regard to the legitimacy of a regime is not just that its underlying political structures *in fact* conform to the demands of justice, but that its citizens *believe* that they do. What matters with regard to the justification of state coercion is not just that “those who hold political power can satisfy themselves, and not citizens generally, that they are acting properly” (John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), pp. 143-4). Of course, it also matters to Rawls's that these beliefs are *reasonable*.

territory. What gives states this right is not the affirmation by itself, but rather the nature of the thing that is affirmed. States rule. To affirm a state is to affirm its rule. A person cannot without contradiction, affirm a state and then resist the very thing that is affirmed.

In this regard, states are very different from charitable organizations, sports teams and the like. It is not a part of the nature of charitable organizations that they possess authority over their members. To express support for such an organization is to express interest in the cause with which that organization is concerned, not to offer permission for it to exercise coercive authority over oneself. Something similar could be said for sports teams, brands and celebrities. States are unique in that only states exercise anything like political authority over persons, and so only political affirmation can give rise to the kind of authority that states exercise.¹⁸

One immediate question that might arise is whether this account of legitimacy as affirmation is really so novel, and whether it just amounts to a consent-based account of political obligation and legitimacy with all of its concomitant problems. Indeed, since explicit contractual negotiations between citizens and their states are so obviously absent, most consent theorists argue that consent ought to be understood more broadly to include not just explicit contractual agreements, but also

¹⁸ One possible exception would be the authority that parents exercise over their children. Such an example is especially relevant for this discussion since the comparison between parental and political authority is so frequently drawn. Within contemporary debates about political obligation, this is especially true of certain kinds of associative theories. This comparison is extremely illuminating, though not for the reasons that motivate associative theories, I think. For such theories, the point of the comparison is that it provides an example of how group memberships can give rise to obligations, even when they are non-voluntary, and so render more plausible the idea that non-voluntary political membership, under the appropriate conditions, can by itself explain why citizens are obligated to their states. But the problem here for such theories is that while familial relationships are clearly *non-consensual*, they are not so clearly *non-voluntary*, and parental obligations (that is, obligations by children *to* their parents) are best understood as being voluntary in exactly the same way as political obligations are under this account of legitimacy as affirmation. Children, of course, may constantly “question the authority” of a parent, but such instances are best understood as the withholding of specific support as a result of some particular action that the parent has taken, rather than the deep rejection of a parent’s overall authority or the absence of diffuse support. Instances of the latter are, I think, rare, and, as in the political case, represent a deep fracture in the purposes of the authority that parents and political institutions wield. When there is no affirmation, however, genuine authority is absent.

other acts that *amount to* consent. So, for example, both John Plamenatz and Peter Steinberger argue that voting or using public resources ought to count as consent, even if there is no explicit contract scenario.¹⁹

Such expanded notions of consent are, in fact, problematic. What makes consent an attractive ideal is that a person is bound by the resulting obligation only through an intentional, voluntary act. To be more specific, an act of consent is only binding when it is 1) personal (i.e. persons can only bind themselves; others cannot consent for them); 2) voluntary (i.e. they were not coerced into the deal); and 3) informed (i.e. the terms of the consent were clearly communicated at the time of consent). Thus, resulting obligations always respect an individual's freedom. She cannot be bound against her will. Paradigmatic instances of consent involve explicit contract scenarios, where the terms of the deal are made clear to all parties, and participants are at liberty to offer or withhold their consent. Binding consent need not necessarily involve explicit speech acts or voluntary gestures. A person might publicly announce in the appropriate circumstances that unless participants opt out, they will be considered to have consented to some arrangement. This is what might plausibly be described as tacit consent. Thus, a person need not commit some express act of consent in order to be genuinely obliged.

The problem with accounts of political obligation rooted in expanded notions of consent is that they do not seem to satisfy the features that make consent morally binding. For one thing, when one calls the fire department for help, or even when one votes, there is never an explicit contract that proposes that the action is understood to amount to a pledge to support a state and obey its laws. More seriously, even if such contracts were explicit, the burdens of rejecting membership are so great that, however one construes the relevant act of consent, they violate the voluntary condition

¹⁹ John Plamenatz, *Consent, Freedom and Political Obligation* (Oxford: Oxford University Press, 1968); and Peter Steinberger, *The Idea of the State* (Cambridge: Cambridge University Press, 2004).

of binding consent.²⁰ Thus, expanded notions of consent or appeals to tacit consent seem to violate the normative logic that makes consent genuinely binding. Simmons argues that such theorists often seem to confuse authentic consent for an “attitudinal’ sense of ‘consent,’”²¹ which amounts to having an attitude of approval or dedication. Such an attitude, however, has nothing to do with the morality of consent since consent obliges regardless of what attitudes a person does or does not have.

This account of legitimacy as affirmation holds that such an ‘attitudinal sense of consent’ is, as Simmons argues, no kind of consent at all, and that any theory that attempts to exploit such a notion—*as an account of consent*—is deeply problematic. This account, however, holds that affirmation has its own moral logic that can bind citizens independent of any considerations of consent. To reiterate, to affirm a state is to affirm the kind of thing that a state is. One cannot affirm a state and resist the political authority that states by their nature exercise. To affirm a state is to grant it authority over one’s own life. It is to give it permission to rule. Thus, affirmation can create moral obligations, but not through the normative mechanisms of consent.

Affirmation is a voluntaristic moral concept, however, and so is similar to consent in many regards. Affirmation is morally binding only when it is freely given. Indeed, it is hard to imagine how it could be given in any other way. Further, a person is under no obligation *to* affirm a state, and one can withdraw one’s affirmation at any time. When such affirmation ceases, so too does the corresponding political obligation. If a state has been affirmed, however, then a person has given it permission to rule. It is legitimate and such a person is obliged to obey it.

Of course, even if one concedes that a state *could* become legitimate in virtue of the affirmation that citizens express towards it, this by itself does nothing to show that most states *are* legitimate. There are, however, good reason to think that the vast majority of citizens, in the kind of

²⁰ For more on these problems see Simmons, *Moral Principles and Political Obligation*, Chapters 3 and 4.

²¹ Simmons, *Moral Principles and Political Obligation*, p. 93.

at least minimally just states that most people think of as being legitimate, affirm their states. While the topic of measuring diffuse support as distinct from specific support is fraught with controversy, what is not in doubt among political scientists is the fact that general evidence for widespread diffuse support in well-ordered nations like the United States is historically extraordinarily high. For example, in a study of election survey data, Stephen Craig *et al* write that, “although there is disagreement as to whether the negativism that emerged in the United States during the 1960s and 1970s represented a loss of confidence in something other than the incumbent office holders...no one believes that it involved a substantial erosion of support for the political system and the constitutional order.”²² Their measures of diffuse support were typically above 90%. Other standard measures of diffuse support are similarly overwhelming.²³ Additionally, measures of a perceived obligation to obey the law are similarly high.²⁴ It is, of course, possible that persons could agree with one of these statements of affirmation, yet nevertheless fail to affirm the regime as a whole. They might, for example, strongly agree with the statement that they “would rather live under our system of government than any other,” only because they believe that every other state is worse. The significance of this empirical data does not lie in any one particular finding, but rather in the sum total of what they say about attitudes of legitimacy. Taken all together, they suggest extremely high levels of support.

²² Stephen C. Craig, Richard G. Niemi, and Glenn E. Silver, “Political Efficacy and Trust: A Report on the NES Pilot Study Items,” *Political Behavior* 12 (1990): 289-314, p. 296.

²³ For example, in collected data from the General Social Survey from 1972-2006, 95.7% of respondents stated that it was either ‘very’ or ‘somewhat’ important to vote in elections. 95.1% thought that it was ‘very’ or ‘somewhat’ important to serve on a jury. On a 7-point scale where 7 is ‘important’ and 1 is ‘not at all important,’ 83.8% responded with 6 or 7 with regard to the importance of paying one’s taxes. Only 4.3% rated it between 1 and 3. 71.3% thought that democracy worked well in America, and 79.9% said that they were either ‘very’ or ‘fairly’ satisfied with the way democracy works in America. This data is available at <http://www.norc.org/GSS+Website/>.

²⁴ See, for example, Thomas Tyler, *Why People Obey the Law* (New Haven: Yale University Press, 1990).

At least historically in well-ordered, developed nations, while not all citizens support a particular ruling government, the vast majority of them do support the underlying constitutional structure of the state and so support the state's authority. They might disagree with the policies of the government, but nevertheless affirm the state's overall authority. It is only when a populace radically rejects a regime that its legitimacy is threatened and a constitutional crisis results. But this is precisely the theoretical outcome we would want, as governments can obviously lose their legitimacy.

4. Some Objections

On this account of legitimacy as affirmation, a specific kind of attitude of support toward a state can grant it the right to rule. To affirm a state is to support it in its exercise of legitimate authority, and so one cannot coherently offer such support while resisting the state's exercise of coercive political power. Such an attitudinal account represents a novel kind of voluntaristic theory of legitimacy and political obligation, distinct from consent or tacit consent accounts. Of course, a number of worries might be raised with it.

One worry that might be raised concerns whether the notion of affirmation is being construed too monolithically.²⁵ A state might well be the object of widespread affirmation by its subjects, but such affirmation need not be directed toward the state as a whole or its coercive legal apparatus. Instead, it might be directed toward the state's history, values, or culture. Thus a person might express substantial support for her country, but this support is not actually directed toward the coercive aspects of her state. Thus, while she supports it, this support would not grant it the right to rule.

²⁵ I am grateful to Nate Adams and David Estlund, who both have raised this worry with me.

It does seem possible that a state might be affirmed in this partial way. This is especially true for people who are not citizens of a particular state, but who nevertheless admire aspects of its culture (an issue which might be thought to create another worry that will be addressed below). But such an attitude of partial affirmation for a citizen and her own state, seems unlikely in practice. First, standard measures of diffuse support focus on attitudes of support directed specifically toward the state itself or its component political institutions. Second, because states are defined by their monopoly over the legitimate use of force, and because coercive legal authority is central to everything that a state does, it seems implausible to suggest that a person might be affirming only some aspects of a state without also affirming the underlying coercive apparatus itself. The state simply is a coercive legal institution. One cannot affirm its courts or its welfare programs without also affirming its coercive authority, since these functions could not be enacted without the backing of the coercive legal apparatus of the state; this apparatus is what enables everything that a state does. So while it is theoretically possible that a state might be affirmed partially, this seems extremely unlikely in practice, at least for citizens and their own state.

A further objection that might be raised relates to the challenge for theories of political obligation that they meet the *particularity* requirement.²⁶ This requirement amounts to the suggestion that any plausible theory of political obligation must explain the fact that a political obligation is a special moral obligation that obtains between a particular person and a particular state. A theory that explained why a person was obliged to support just regimes in general, but not especially to the particular state of which that person is a citizen, would fail to explain this feature. Simmons has argued that the particularity requirement actually creates twin demands.²⁷ A successful theory must

²⁶ See, A. John Simmons, *Moral Principles and Political Obligation*, pp. 30-5.

²⁷ A. John Simmons, "The Particularity Problem," *APA Newsletter on Philosophy and Law* 7 (Fall 2007): 1-27, p. 19. Simmons there describes the problem of a theory being "under-inclusive" and "over-inclusive," though I here construe these concepts as being simply "inclusive" and "exclusive," respectively.

be both sufficiently *inclusive* and *exclusive*. It must be sufficiently inclusive in the sense that it must explain why most states (at least those kinds of states that are typically thought to be so) are in fact legitimate with regard to their own particular citizens. A theory of legitimacy under which only a small minority of states proved to be legitimate in this way would be an unsuccessful theory. Similarly, it must be sufficiently exclusive in that it explains why the legitimate authority of a state extends only to its own citizens, and not to just anyone generally. A theory that resulted in the legitimate authority of a state extending to citizens beyond its own borders would be a theory that failed to accord with this intuition.

The problem of inclusivity was discussed above, and it seems as if there is robust empirical evidence to think that the vast majority of citizens in states that are typically taken to be *de facto* legitimate like the United States, affirm them, and so grant those state the moral authority to rule. The account is appropriately inclusive since it can explain why states that are taken to be *de facto* legitimate, are in fact, legitimate.

It might seem, however, that the demand that an account of legitimacy be sufficiently exclusive poses a deeper problem for this account. Here, the worry is that a theory of legitimacy as affirmation allows that the legitimate authority of a state might extend to persons living outside of its borders, who nevertheless admire its leaders or various aspects of its structure. Foreigners might have an attitude of support for a state other than their own, because they admire its history, culture, political values or leaders. This would lead to the counterintuitive conclusion that the legitimate authority of a state might extend beyond its borders to these admiring outsiders. This worry, however, is misplaced. Instances of external support for a regime can take many forms. It might amount to the admiration of a particular political *figure*, and this admiration itself might focus on that figure's biography, policies or personality. It might amount to the admiration of a particular state's *culture*, either the social or political values that it instantiates. It might focus on the particular state's

policies—policies that are admired either because they are in tune with an admirer’s conception of justice, or because it benefits that person and her country. All of these instances of admiration, however, seem importantly different from the account of affirmation defended earlier. It is most plausible to suggest that what is going on in these cases, is that outsiders admire these various features of other states because they reflect their own values. They are not, however, affirming the state’s exercise of coercive power itself. On the account of defended here, affirmation of a state generates a permission for that state to rule because to affirm a thing is to affirm the kind of thing that the state is. One cannot affirm a state’s rule and then reject it at the same time. External admiration seems different in this regard. An external admirer can admire a state’s conception of justice, or the way that the state meets the needs of its citizens, or a particular politician’s charisma or biography, without affirming that state’s coercive power. To admire some of the particular virtues of a state is not the same as affirming the state’s coercive power. It is hard to imagine what it would be for a woman in England, for example, to affirm the actual coercive state power of France, *with regard to herself*.

Even if it was the case that a foreign citizen was in fact affirming another state’s actual coercive power, that coercive power is not being exercised against her, and so she is not affirming coercive political action against *herself*. For example, Smith, who is English, might affirm the coercive political power of France against its own citizens. France then, has Smith’s permission to coerce citizens of France, but this, of course, matters little to the normative relationship between the state of France and its actual citizens. What matters here is whether *they* affirm it. They care little about whether their state has Smith’s permission to coerce them. Further, Smith’s affirmation of the French state says nothing about its normative relationship with her. Because Smith is outside of France’s control, her affirmation is not directed toward its coercive power *against her*, and thus gives it no permission to rule. If strangely it did attempt to extend its coercive power, and she affirmed

this extension, then she would grant the state permission to rule. Suppose when visiting France, she is arrested and ordered to serve in its army. Under these conditions, if she did affirm the actual coercive power of the state, and that coercive power was being exercised against him, then she would be giving permission for the state to be exercising that power. But this scenario is highly unusual and produces an uncontroversial result. This would be analogous to a state annexing a neighboring state and bringing it under its control. If this new expansion of the aggressive state's powers were affirmed by its newly annexed citizens, then its political power over them would be legitimate. The theory as a whole seems appropriately inclusive and exclusive.

Finally, Simmons has argued that the general problem with attitudinal accounts is that they are problematically subjective. Such accounts “turn out to be about the wrong thing,” making “judgments of legitimacy too much about subjects and too little about their states. To call a state legitimate is surely to say something about *it*, about the rights it possesses or the scope of its authority.”²⁸ In focusing on the subjective attitudes of citizens, attitudinal accounts leave it open that “states could create or enhance their own legitimacy by indoctrination or mind control; or states might be legitimated solely by virtue of extraordinary stupidity, immorality, imprudence, or misperceptions of their subjects. Surely none of this is what any of us has in mind when we call a state or a government legitimate.”²⁹

Attitudinal accounts, however, seem no more problematically subjective than paradigmatic consent-based accounts of legitimacy. Strong Lockean legitimacy refers to a property of states (namely, their right to coercively enforce their laws) that they possess in virtue of something about their subjects (namely, that they consent to their rule). Similarly, attitudinal accounts focus on a property of states that they possess in virtue of something about their citizens (namely, that they affirm and endorse their political institutions). Simmons's worry is that attitudinal accounts lose

²⁸ Simmons, “Justification and Legitimacy,” p. 749.

²⁹ *Ibid.*, p. 750.

track of the dubious ways that states might gain their citizens' affirmation. In this regard, however, there appears to be no difference between consent-based approaches and attitudinal ones. For Lockean, consent is only morally binding when it is given under appropriate conditions. If citizens grant their consent to a regime because they are mad or incompetent, or have been duped, bribed, coerced, or otherwise cowed into submission, then such a regime has no legitimate authority over them. Similarly, a citizen's endorsement or affirmation of a regime would be morally insignificant if it was achieved by trickery, deceit, coercion, inducements, manipulation or other dubious methods. Attitudinal accounts are no more problematically subjective than consent theories of legitimacy.

5. Conclusion

This theory of legitimacy as affirmation attempts to generate a theory that is rooted in the same set of normative concerns as voluntarist accounts, while avoiding their skeptical conclusions. The idea of affirmation is interestingly similar to and different from consent. Affirmation is clearly unlike consent insofar as the latter involves an intentional contract situation. This is clearly absent in situations of affirmation. Like consent accounts, however, affirmation begins with what ought to be a properly liberal worry about the need to explain the appropriateness of a state's coercive political power to those subject to it. Further as with consent accounts, the ideal of affirmation suggests that any justification of coercive political power needs to be actual and personal, rather than abstract and hypothetical. Affirmation is, after all, an actual, direct and personal subjective state. Because of this, citizens who affirm a regime will be motivated to support the state and obey its laws. For the institutions of an affirmed regime reflect the political ideals of the citizens under its rule. Their deepest held political ideals are instantiated in its political structures. Affirmed regimes, even as they exercise coercive political power, will not appear as a foreign or alien imposition into the lives of the citizens, but rather they will represent the common political ideals that they hold most dear. Thus,

the citizens of an affirmed state are already committed to the norms behind their political institutions. They are precisely the institutions that they want, and they are therefore motivated to take on the burdens and responsibilities of membership.

Such an account then gets at something deeper than consent. Citizens of a state that has earned their affirmation are reconciled to it, and embrace its authority since it is structured according to the moral ideals to which they are already committed.³⁰ For such citizens there is no question of whether the state has the right to coercively enforce the law and whether they are bound by correlative obligations to obey. Rather they actively support the state, respect its institutions and willingly do their part. Obligation is replaced by enthusiasm. Indeed, in this way affirmation might be seen as being even more direct and personal than even consent. One of the attractions of consent, as Simmons says, is that it makes political commitments, “seem less external and more obvious...[and] makes the constraint more likely to be motivationally efficacious.”³¹ But while genuine consent creates moral obligations, the mere presence of consent at some time in the past says little about a citizen’s actual current attitude of support or enthusiasm for her state. A person may have consented to accept the authority of a political regime and thereby be bound by whatever obligations were included in the terms of consent, but may come to see these demands as onerous, even if her state has not violated the terms of their agreement. Such a person is still obliged, but her prior commitment will hardly seem “less external, and more obvious” and more likely to be motivationally efficacious. The deal will still be binding, but she will view the obligations of membership and the state’s demands as alien, oppressive and constricting.

³⁰ Rawls’s more recent talk of his overall philosophical project as aiming at ‘reconciling us to our social worlds’ is interesting, even if enigmatic, in this regard. See, for example, *The Law of Peoples* (Cambridge: Harvard University Press, 2001), pp.124-8; *Justice as Fairness: a Restatement* (Cambridge: Belknap, 2001), pp. 3-4; and *Lectures on the History of Moral Philosophy* (Cambridge: Harvard University Press, 2000), pp. 331-6.

³¹ Simmons, “Justification and Legitimacy,” p. 762

This account also highlights the importance of transparency and communication between a state and its citizens. A state might be wholly justified in pursuing some course of action or enacting some policy measure, and citizens that resist such policies might be irrational for doing so, but this does not mean that the state has no further responsibilities in articulating the rationale and purposes behind its action. The worry here is not merely that such actions might lead to political instability, though this obviously is true. The point is rather that, as Rawls says, it is not enough that “those who hold political power can satisfy themselves, and not citizens generally, that they are acting properly.”³² In short, a state ought always to articulate and justify its actions to its citizens. Often, a state will be justified in enacting unpopular policies. The relationship between citizens and their state, however, is an issue of moral concern independent of an objective analysis of the justice of political institutions or policies. One of the advantages of distinguishing between the justification of a regime and its legitimacy, as Simmons does, is that doing so can help to account for the moral significance of citizens’ attitudes toward their states, even if this is not the only thing that matters. To put it crudely, it is a good thing that citizens can affirm their political institutions, seeing them not as an alien or foreign imposition into their lives, but as an instantiation of their own political ideals. Indeed it is a good thing for what ought to be liberal reasons.

Further, while it is the case that well-ordered and developed states have historically enjoyed high levels of support from their populace, it is increasingly clear that such support cannot be taken for granted. There are many reasons to be worried that in a great many of these countries, trust and support are in precipitous declines, especially since 2004.³³ The reasons for this are, of course, extraordinarily complicated. But it is clear that declines in social trust is a pressing problem in a great

³² John Rawls, *Political Liberalism*, p. 143-4.

³³ See, Jack Citrin and Laura Stoker, “Political Trust in a Cynical Age,” *Annual Review of Political Science* 49, p. 52.

many countries, and it is important for theorists whose primary preoccupations have been normative to turn their theoretical attention to trying to understand the causes and import of this erosion.³⁴

Many liberal political theorists who reject voluntarism nevertheless recognize its appeal. Allen Buchanan notes that consent theories have represented the “gold standard” for theories of political obligation and legitimacy, and he admits that it offers an enormously attractive approach to such questions, as well as others such as the relationship between political power and equality. He rejects it, not because of its features or coherence, but rather because it represents an unsatisfiable demand, whose failure ought not to obstruct other attempts to theorize the morality of coercive state power. It is “remarkably ill suited to the political world and so extraordinarily demanding as to be utopian in the worst sense.”³⁵ This paper, however, has attempted to offer a voluntarist account that captures the core features of consent accounts, without being utopian. Many liberals have been leery of embracing this kind of voluntaristic normative concern because it has always seemed to lead to skepticism about legitimacy. This paper has attempted to allay this worry.

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³⁴ In this regard, Kevin Vallier’s recent book, *Trust in a Polarized Age* (New York: Oxford University Press, 2020), is a particularly welcome contribution.

³⁵ Allen Buchanan, “Political Legitimacy and Democracy,” p. 699.