

Facing Authority. A Theory of Political Legitimacy

Thomas Fossen

Oxford University Press, Oxford, 2024.

222pp, £57.00 (Hardback), ISBN: 9780197645703

Thomas Fossen's book has long been expected, not least because of his contributions to theories of political representation as well as his pragmatist understanding of legitimacy, which he has advanced in original and compelling ways in the past. Those insights come together in *Facing Authority*.

The topic of the book is political legitimacy. Scholars often treat it as a property of rules and institutions whereby assessing their (il)legitimacy becomes tantamount to a cognitive process investigating whether regimes, as it were, "have it"—tantamount, that is, to the application of codified principles to facts. However, Fossen claims, they neglect the fact that judging legitimacy is a practice, not merely an intellectual disquisition (p. 3). A better perspective is needed. The predicament that subjects face when evaluating the legitimacy of a regime is how to *practically* relate to it: what stance to take toward its commands, how their own identity is formed by their judgments, and how their time and spatial context shape and are shaped by their judgment.

In addition to the introduction and the conclusion, the argument is presented in two parts with three chapters each. The first develops the vocabulary required for understanding legitimacy. It surveys contemporary approaches to the problem (Chapter 1) and champions Fossen's own pragmatist conception of legitimacy (Chapter 2), which he connects to judgment (Chapter 3). The second investigates how judging legitimacy manifests in how the governed represent authorities (Chapter 4), in the ways in which the governed frame their identities qua political subjects (Chapter 5), and in their relation to the time and space within which their judgments of legitimacy take place (Chapter 6).

Chapter 1 examines the dominant normativist view that (il)legitimacy is either a sociological description of a regime or a codification of principles or standards. There is something to both views, Fossen thinks, but they do not tell the whole story. Normativism "merely wishes away uncertainty and disagreement" (p. 15) about what those standards mean and how they arise. The charge is addressed against "normativists" and against others, such as Rawls and Habermas, who do consider the practical dimension of judgment but still see judging legitimacy as applying moral standards to facts.

However, it is one thing "to proceed theoretically from the stance of a citizen qua self-governing citizen, and another from that of a perplexed subject trying to understand what is going on" (p. 33). Judgment is more than an intellectual problem — it is action. Hence, Chapter 2 reconceives legitimacy along pragmatist lines, as something one *does* when claiming a regime or authority is (ill)legitimate. The section first expounds Fossen's conception of politics as stance-taking. It then explains what one does when claiming an authority is (il)legitimate in that political context (p. 43). Next, it reflects on the importance of distinguishing social perspectives – participants and observers of a practice of judging legitimacy – to determine, in a final step, what it means for something to *be* legitimate (*de jure*), as opposed to merely being *taken* as such (*de facto*).

Chapter 3 moves from legitimacy to judgment. It develops a notion of judgment that is critical of the normativist philosophical literature, which treats it as a discrete moment of decision. Instead, it is a "complex of activities through which our sense of political reality is constituted, maintained, transformed, and sometimes subverted" (p. 69). Fossen calls this process *attunement to political reality* (p. 73-78). The key point is that political judgment is an ongoing social action, not a mental

process or an outcome of that process that remains *in foro interno* and that is subject only to one's sovereign control (p. 83). It is within a political space that one's reasons and attitudes towards a regime are built and expressed.

The second part of the book explores how judgments of legitimacy manifest in practice and what they apply to. Its three chapters ask, respectively, how those judgments relate to their object, to the identity of political subjects, and to time and space.

Hence, Chapter 4 argues that subjects' representation of power is constitutive of the (il)legitimacy of the authorities claiming it. Normativism overlooks this and is therefore unable to grasp what goes on when subjects respond to the powers that be. Judging legitimacy means representing authority as (il)legitimate. To understand what representation means in this context, Fossen engages with constructivist theories, which see representation as a "practice of making *claims* to the effect that something represents something else" such that representing becomes a matter of "making, receiving, rejecting, or reiterating such claims" (p. 103). Accordingly, no such thing as authority exists without subjects portraying them as such, a point that Fossen presents as a key ontological insight: "...they are, in a sense, nothing but appearance, that is, reiterated portrayals. The authorities exist qua authorities that they are in virtue of being represented as such" (p. 107).

Chapter 5 reflects on the role of subjects' identity in judging legitimacy. Fossen argues that normativists reify disagreement about what makes subjects members of the community and how they evaluate their ruler's legitimacy. But individuals judging a regime find themselves in a predicament. They do not merely describe a property of their subjectivity (political membership or lack thereof) or the regime ([i]legitimacy). Instead, they partake of a practice of self-constitution and self-transformation by "[contributing to sustaining] or subverting a governed collective, as characterized in some specific way, and [by seeking to] associate or dissociate the judging subject's personal self from this collective" (p. 143). Given that authorities claim a right to rule and the competence to attribute the role of members or non-members to individuals who may disagree with their judgments, subjects engage in an ongoing struggle "over the characterization of collective selfhood" (154).

Chapter 6 extends the critique against normativism to consider where and when legitimacy judgments occur. Normativists think the space and the time in which legitimacy judgments occur are fixed events at specific moments. But this obscures that judging legitimacy is to situate oneself practically vis-à-vis the regime's claims to rule, to constitute one's own identity qua and others' qua political subjects, and to take stances towards those claims in ways that account for and constitute space and time as elements of that judgment. One responds to events, yes, but also partakes in them, shaping them and providing them with meanings that are not ontologically prior to judgments. This tension, which Fossen interprets as an interaction between *kairos* and *virtù*, means subjects create time and space through practice – they engage in *timecraft*, i.e., "the work that is involved in situating and orienting ourselves within and in relation to this plurality of temporal frames and registers in a political situation" (p. 173). One judges, in Fossen's vocabulary, in the present progressive; orienting oneself within a plurality of temporalities, standing in a practical relation to time.

Facing Authority is a refreshing, critical, charitable and important take on a fundamental problem. It takes seriously one of the most canonical terms in moral and political theory and moves the scholarly literature towards fruitful and hitherto untrodden paths. It underscores the salience of legitimacy and judgment as categories of the highest moral and political import, stressing their practical dimension like no other contemporary monograph. Few words in our philosophical vocabulary are as central to how theory relates to action as legitimacy, and Fossen builds a strong bridge between it and the actual political world in which it is deployed by individuals, with examples of real-life struggles for legitimacy.

And like any original and important book, it raises questions. I will conclude this review with one: what about justice? Do practices of joining protests, supporting regimes, criticising or rejecting authority claims and so on, express claims only about their (il)legitimacy? Or can they also convey claims about their (in)justice or (im)morality? As commentators often point out, both categories are intertwined but nonetheless different. Roughly speaking, my own view is that legitimacy has to do with narratives providing comfort for the possibility that political outcomes do not always come one's way. They are justifications (especially for those on the losing side of a decision) to accept political outcomes we might otherwise reject or disagree with. Judgments of justice are different. Again, roughly speaking, they are considerations about the contents of a political outcome, independent of the features of the process that produced them. Ronald Dworkin's remarks in *Law's Empire* aptly describe the divide: "Justice is a matter of outcomes: a political decision causes injustice, however fair the procedures that produced it, when it denies people some resource, liberty, or opportunity that the best theories of justice entitle them to have".

Facing Authority is silent about this concomitant and different way of answering why someone should join a protest or comply with a regime's commands. To be fair, there are elements in its methodology that would possibly allow Fossen to extend the critique of normativism to the domain of justice, for we could indeed think of judgments about justice not as epistemological processes but as practices constitutive of our identities and of the very nature of political outcomes. But one should not assume something that must be argued for. "Not my President", as several protesters in the US have been chanting and writing on banners while I write this review, are joined by others holding signs saying, for example, "This is a democracy – ACT LIKE IT!" Are they saying the same thing? Are they even compatible? It seems to me that we will fail to understand what they mean and do if we limit ourselves to using the conceptual apparatus of legitimacy. Together, they express both a critique and affirmation of democratic institutions (legitimacy) *and* a stance on the (in)justice of their outcomes. They judge whether those institutions are legitimate and whether they live up to the demands of justice, morality or rights. Fossen offers a compelling theory of the former but says nothing about the latter — about whether failing to honour one may affect our judgments about the other. Can there be a just illegitimate regime? A legitimate yet unjust one? Or does losing something in the way of legitimacy inevitably mean losing something in the way of justice?

These questions remain open and highlight what I think is a crucial aspect of the problems that preoccupy Fossen. But they are certainly not fatal. Rather, they are invitations to further debate in the spirit of a book that political philosophers concerned with a term as significant as legitimacy should read.

Donald Bello Hutt is an Associate Professor of Moral and Political Philosophy at the University of Valladolid.