

Political Legitimacy and the Unreliability of Language

Eva Erman & Niklas Möller

Stockholm University, Royal Institute of Technology

Abstract: Many political theorists in current debates have argued that pragmatist theories of mind and language place certain constraints on our normative political theories. In a couple of papers, we have accused these pragmatically influenced political theorists of misapplication of otherwise perfectly valid ideas. In a recent paper, one of the targets of our critique, Thomas Fossen, has retorted that we have misrepresented the role that a pragmatist theory of language plays in these accounts. In this paper, we claim that Fossen's attempt to chisel out a role for his account in normative political theory rehearses the same problematic view of the utility of theories of language as his previous iterations. We argue that Fossen's account is still guilty of the fallacious claim that a pragmatist theory of language (in his case Robert Brandom's account) has implications for the form and justification of theories of political legitimacy. We specifically focus on three flaws with his current reply: the idea that criteria and conditions are problematic on a pragmatist outlook, the idea that a pragmatist linguistic account applied to a particular political context will have a distinct political-theoretical payoff, and the idea that a fundamental linguistic level of analysis supplies normative guidance for theorizing political legitimacy.

Key words: political legitimacy, pragmatism, Robert Brandom, theories of language.

Many political theorists in current debates (Mouffe 1999, 2000; Tully 1989, 2002; Norval 2006; Fossen 2013) have argued that the pragmatist theories of mind and language put forward by Ludwig Wittgenstein (or ideas, if you prefer not to use the word 'theory' for his thoughts) and Robert Brandom place certain constraints on our normative political theories. In a couple of papers, we have accused these pragmatically influenced political theorists of misapplication of otherwise perfectly valid ideas (Erman and Möller 2014, 2015). In a recent paper, however, one of the targets of our critique, Thomas Fossen (2017), has retorted that we have misrepresented the role that a pragmatist theory of language plays in these accounts:

Pragmatism's significance for thinking about political legitimacy does not lie in the normative conclusions it justifies but in the way it re-orientes our thinking toward political practice. This shift in orientation does not refute standard theories of political legitimacy, as such, but it renders problematic their narrow focus on criteria of legitimacy, in abstraction from the forms of political practice in which such criteria are at stake (Fossen 2017, 2).

Fossen further argues that we presuppose, in our critique, an "overly narrow view of what 'normative political theory' consists in ... that pragmatism calls into question" (2017, 2). The task, he claims, "is not just to articulate criteria of legitimacy, but more fundamentally to explicate the ways in which the question of legitimacy manifests itself in practice, and the forms of activity through which we might engage it" (2017, 11).

In what follows, we will argue that Fossen's attempt to chisel out a role for his account in normative political theory rehearses the same problematic view of the utility of theories

of language as his previous iterations. If anything, he now makes even more of a strawman out of the accounts from which he attempts to distinguish himself. We will argue that Fossen's account is still guilty of the fallacious claim that a pragmatist theory of language has implications for the *form and justification* of theories of political legitimacy, focusing specifically on *three* flaws with his current reply: the idea that criteria and conditions are problematic on a pragmatist outlook (first section), the idea that a pragmatist linguistic account applied to a particular political context will have a distinct political-theoretical payoff (second section), and the idea that a fundamental linguistic level of analysis is of normative guidance for theorizing political legitimacy (third section).

Before we address these flaws, let us say a few words about Fossen's project. In Fossen's view, his account – as well as the accounts of Mouffe, Norval, and Tully making use of Wittgenstein – aims “to open up conceptual room for a different way of looking at a problem” (2017, 4). Utilizing Brandom's seminal theory of language, Fossen proposes an account of the specific role of the concept of legitimacy within a certain form of practice: the encounter between political subject and authority. A key claim is that the role of the concept of legitimacy is to express one's political stance toward the authorities:

In calling an authority legitimate, one attributes an entitlement to rule to that authority, while also undertaking a commitment to treat it in ways appropriate to its status (say, as a source of reasons), and attributing such commitments to other subjects. In this way ... one can explain what it is to *be* legitimate in terms of taking something *as* legitimate (Fossen 2017, 6).

Hence, while Fossen acknowledges that Brandom's theory is fully general, he still stresses “its significance for thinking about political legitimacy”: its specific application to the political context has a theoretical payoff as it “draws our theoretical attention toward political practice” (2017, 7; 2013, 426-50). Fossen concludes that while Brandom's theory alone does not entail any constraints on political theories, “[i]f the content and justification of criteria of legitimacy is bound up with ongoing practice ... then *practice* may place such constraints” (2017, 7). According to Fossen,

pragmatism about language *does* suggest ... that the purview of a theory of political legitimacy is often construed too narrowly. Theories of legitimacy are usually taken to consist in the articulation and justification of criteria of legitimacy (what Erman and Möller refer to as a ‘substantial’ normative theory). Typically, theorists proceed as if one can settle the content and justification of such criteria in abstraction from the forms of practice through which legitimacy is politically contested – just as certain theorists of language consider meaning (semantics) in abstraction from use (pragmatics). From a pragmatist perspective, that is a problematic form of abstraction because it fails to do justice to the ways in which concepts and criteria are bound up with practice. So, the difference a pragmatist approach makes here is that it problematizes the failure to attend to politics – a lack of realism, if you will (2017, 7).

With these basic ideas on the table, largely in Fossen's own words, let us turn to the first flaw of Fossen's attempt to save his Brandomian approach to normative political theory.

I. FIRST FLAW: THE 'CRITERIA' STRAWMAN

Fossen structures his reply around the question of whether his account is guilty of the 'pragmatist fallacy,' i.e., the fallacious idea that one can infer normative conclusions from pragmatist linguistic theories. He insists that it is not, and as first order normative conclusions are concerned, we agree. *Pace* Fossen's explicit denial and somewhat shifting terminology, however, his account is still guilty of an analogous *meta-normative* pragmatist fallacy, namely, to put constraints on the *form and justification* of normative political theories of legitimacy through a theory of language.

In his original account, he claimed that on a pragmatist analysis, political judgment is not a philosophical problem "calling for a general solution" (Fossen 2013, 442). We demonstrated in our previous article that Brandom's theory of language entails no such anti-generalist conclusions. In his current reply, Fossen downplays the anti-generalist constraints of his previous iteration, now putting a stronger emphasis on *criteria of justification* as the feature that traditional political theorists allegedly are obsessed with but from which his account frees us. His account, he now insists, "re-orient[s] our thinking toward political practice" (Fossen 2017, 2) and thus "free[s] us from captivity by a picture" (Fossen 2017, 4). This picture is political philosophy as a theoretical endeavour with a "narrow focus on criteria of legitimacy, in abstraction from the forms of political practice in which such criteria are at stake" (2017, 2).

But Fossen's new emphasis on criteria of justification is just a sheep in wolf's clothing: it faces the exact same objection as we demonstrated in our previous critique. There we showed that Brandom's account, in which conceptual content is grounded in our actual practices – the commitments and entitlements we assign to ourselves and our fellow linguistic participants – is in no way 'anti-theoretic': it entails no bars on general principles or norms, holding for all eternity and for all and everyone. It is in fact a feature of Brandom's account that it accommodates, in principle, true claims on any level of generality and within any domain. Mathematical theory, the laws of physics, and even Brandom's own systematic account of language, which aims to be perfectly general – what he claims about language does not hold for his fellow Americans only, but for all linguistic practices and practitioners – are all safe, as far as his theory of language is concerned (Erman and Möller 2014, 490-494).

This ecumenical feature of Brandom's theory includes the concepts used in forming claims. We may frame our claims in very particularist language, free from the use of any conditions or criteria and without referring to any particular norms ("Their [*pointing at an entity*] power is legitimate in the here-and-now"), or we may frame them in terms of necessary and sufficient conditions ("The power of an entity X is legitimate if and only if condition Y holds"). Brandom provides a pragmatist account of how a practice counts as a linguistic practice and when a performance counts as belonging to it, together with an inferentialist semantic account of the conceptual content of such performances. That analysis is valid for all sorts of claimings; it does not promote one sort and reject another.

Whether any specific claim holds has to do, as Brandom likes to put it, with the ‘giving and asking for reasons’: as long as we have better reasons to believe a claim, at whatever level of generality and whatever form it happens to have, we should endorse it; otherwise not (Brandom 1994).

Apart from being unsupported from a Brandomian viewpoint, the mentioning of ‘giving reasons’ brings us to the strawman aspect of Fossen’s painting of mainstream political philosophers in general (and us in particular) as narrowly focusing on ‘criteria,’ ‘standards,’ or ‘necessary and sufficient conditions’ for what is legitimate (Fossen 2017, 2-3, 5, 8; 2013, 430). By focusing on *one* way of making a normative argument – that of putting forward criteria and conditions for what is legitimate – and claiming that it is a narrow-minded view of normative political theory, Fossen merely conceals the problem at hand: the lack of *any form* of normative reasoning in his account. While a normative argument does not need to make reference to criteria, standards or conditions, it needs to give *reasons* for (in this case) why an entity is legitimate. These can be contextual or general, but there need to be reasons. Consequently, it is a fundamental problem that Fossen’s account “bracket[s] the question of what makes a political authority legitimate” (Fossen 2013, 432), arguing instead that an account which tells us to focus on how persons or groups *take* it to be so is enough to constitute a “genuine alternative” (2013, 428).

Judging from his insistence on a *normative* role for a ‘Brandomian’ theory of legitimacy, we suspect that Fossen mistakes *inspiration* for *argument*. Here, the case of the utilization of Heisenberg’s uncertainty principle springs to mind. Heisenberg’s uncertainty principle is a famous principle in quantum mechanics, which states that we cannot at the same time measure the exact position of a particle and its exact speed (or rather momentum, i.e. the product of its mass and speed); the more precisely we determine the position, the more uncertain we are about the speed with which it travels. This principle has been used time and again by human and social scientists – through what Douglas Hofstadter calls “careless paraphrases” – in attempts to substantiate how for example the observer always interferes with, and thus changes, the phenomenon under scrutiny (Hofstadter 1985, 455-57). But this is clearly a misapplication of Heisenberg’s principle, which relates only to *quantum phenomena*. In the macroscopic world, there is typically no problem of measuring the exact position of, say, a vehicle and its speed at the same time (Hofstadter 1985, 463-64). Unless it is a case of fallacious reasoning, the use of Heisenberg’s uncertainty principle should only be *inspiratory*; there is no actual *argument* connecting it to the (often reasonable) idea that, say, the conducting of an experiment has an effect on the subject.

Similarly, pragmatist political theorists are often sceptical about general claims such as principles with universal application. But however reasonable that scepticism is, we should not invent an argumentative connection where there is none. Although we agree that this scepticism is often warranted, it would be a severe mistake to think that Brandom’s theory (or any theory of language for that matter) *shows* or *suggests* that it is so. One virtue of Brandom’s account of linguistic practice is arguably that it convincingly

demonstrates that we do not *need* general theories for meaningful discourse. Although this insight is certainly not new, and its consequences have been heavily debated in the particularist-generalist debate in moral philosophy (Hooker and Little 2000), we think that it may still serve as an *inspiration* for theorists aiming to argue for a contextual account of some key concept in political theory.

Fossen, however, thinks there is an argument present. In his reply, he seems to acknowledge that Brandom's *general* theory alone is insufficient to draw his conclusions. But we miss, he claims, all of the *particulars* of his Brandomian account, and it is from *them* that his conclusions allegedly are drawn (Fossen 2017, 6-7). So let us now have a look at these particulars.

II. SECOND FLAW: PRAGMATICALLY INDUCED PARTICULARS

As we have seen, Fossen argues that his *specific* analysis of political legitimacy has the power to open up alternative ways of looking at normative political theory. To rehearse Fossen's main idea: "In calling an authority legitimate, one attributes an entitlement to rule to that authority, while also undertaking a commitment to treat it in ways appropriate to its status ... and attributing such commitments to other subjects" (Fossen 2017, 6).

This is fine as far as it goes; the problem is that this is not very far. Apart from the direct application of Brandom's expressive analysis (attributing a certain combination of commitment and entitlement to the participants), the specific role of legitimacy-claimings as expressing entitlements to rule is almost wholly uncontroversial, since it is more or less the lexical meaning of the term. Thus, we cannot see that any "conceptual room" is opened with this analysis. Few political theorists would deny that legitimacy has to do (at least partly) with entitlement to rule, and that in claiming that X's power is legitimate, a speaker undertakes some set of commitments. This room, it seems to us, is already visited by virtually all political theorists.

Moreover, since the *specific expressive role* of legitimacy-claimings (as opposed to the general role of claimings) is nothing we get from Brandom's account (or the account of any other philosopher of language for that matter), even in the case of the theorist who would *disagree* with the role Fossen ascribes to the concept of legitimacy – arguing for example that political legitimacy-claimings specifically express entitlement to use coercive power if the participants disobey – it is hard to see that she would disagree with anything that Fossen's account gets from the *pragmatist analysis* as such. That is, when the particular role of legitimacy-claimings is switched to whatever the specific theorist favours (X), it is hard to see how she would *not* endorse the idea that one attributes entitlement to X, while also undertaking a commitment to treat it in ways appropriate to its status as well as attributing such commitments to others.

Consequently, Fossen's pragmatist linguistic analysis of legitimacy – his utilization of *general* aspects of assertion (Brandom's account) and his suggestions for the *specific* role of the concept – adds nothing to normative political theory that previously has been

missing. Let us therefore move to the third flaw in his reply, the idea that a fundamental linguistic level of analysis is of normative guidance for theorizing political legitimacy.

III. THIRD FLAW: CONFLATING DIFFERENT LEVELS OF ANALYSIS

In his reply, Fossen complains that we underestimate the relevance, in normative political theory, of thinking about how we theorize our concepts (Fossen 2017, 9). Certainly, Fossen is right when he says that “we (political theorists) often presume that we know what we are talking about when we speak of legitimacy, justice, and the like, and that we know what we are doing in talking about them,” but that “the task of the political theorist is surely also to question such taken-for-granted notions, and to ask whether the ways in which we theorize them do justice to the phenomena in question” (Fossen 2017, 9).

The problem is that Fossen batters at an open door. Part of philosophy has always been to clarify the concepts we are using, and political philosophy is no exception. If we do not agree, at least approximately, about what our terms mean, we are not talking about the same things when we utter them. Therefore, the justification of a normative argument will always depend on how we should interpret the terms involved. An important part of normative analysis typically consists in specification, in more or less clear terms, of the concepts used, so what is claimed becomes as clear as possible. But this, again, has nothing to do with *pragmatism*, and particularly not with pragmatist theories of language as such.

The point of our distinction, in our previous paper, between substantive normative accounts and semantic accounts of a political concept, was to highlight how the latter can never constitute a normative argument. You need normative premises to make a normative argument. Fossen acknowledges this, but still tries to argue that pragmatist theories of language have normative relevance. If all he meant was that conceptual analysis may help us make a good normative argument by being clearer, we would have no objection, other than that this door is already open. However, this is not all he means. He further insists that his Brandomian-inspired conceptual interpretation of legitimacy somehow re-orient us towards political practice, that “pragmatism offers a promising, if as yet unfulfilled, avenue for pursuing a more practice-oriented approach to political theory” (Fossen 2017, 2).

We cannot see what motivates this conclusion. It seems as if Fossen thinks that the idea that we express commitments and entitlements (ours and those of others) by our legitimacy-claimings somehow calls for another perspective, one that is more focused on the practice on making such claims than what theorists have previously taken into account, and which precludes us from thinking that what is legitimate may have a general solution. However, this is not only to misunderstand Brandom, but to misunderstand the debate between pragmatists and other theorists in the philosophy of language. It is *not* contested that we express commitments and entitlements by our

use of various concepts, such that calling someone a ‘terrorist’ rather than a ‘freedom fighter’ entails expressing different sets of commitments towards that person. *Everyone* agrees on this. This is why, as we argued above, no political theorists we know of would disagree with Fossen’s analysis of legitimacy in a way that matters. What is contested in the philosophy of language is what ultimately *explains*, or *accounts for*, meaning. Traditionally, philosophers of language do not think that the idea to start in the ‘takings’ of participants (what they *take* to be the case) in order to analyse ‘beings’ (what *is* the case) holds water. While traditional theories of language take the notions of representation and truth as primitives, Brandom’s theory takes socially conferred normative statuses (such as commitments and entitlements) on the pragmatic side of language, and inference on the semantic side, as the basic building blocks.¹ These opposing camps thus face different justificatory challenges, and while they disagree about its theoretical *relevance*, the fact that we express commitments and entitlements by the use of various concepts is *not* controversial (Brandom 1994, xvi). At this point it should be clear why Fossen’s account of legitimacy does not take us very far. What he attempts to argue is, in effect, that since every physical object, on a fundamental level, consists of atoms and molecules, a correct account of how we should arrange our houses must study the molecular structure of furniture. Naturally, we are *constrained* by the molecular structure of furniture, such that arranging a house using a material too sensitive to pressure or indoor temperature would not be suitable for, say, the kitchen chairs. Still, we need not conduct any chemical analysis to know that chairs made of ice would not be suitable in the normally tempered house. Similarly, as long as we reasonably may be interpreted as talking about legitimacy in our normative arguments, whether or not we should further study the practices of legitimacy-claims is an *open question*. Sometimes we might not need to know more than we already do to make judgments about the legitimacy status of attempts to rule, such as when we look at slave practices or other practices of domination and oppression and judge them illegitimate. Similarly, tyrannical rule may not become legitimate no matter how systematic and multifaceted our analysis is of the political activity enabling subjects to *regard* this authority as such. In other words, it seems that we cannot “explain what it is to *be* legitimate in terms of taking something *as* legitimate” in these cases (Fossen 2017, 6).

Once we move from the ‘inspiratory’ level of analysis to the level of first order normative theorizing – which, as we have seen, does *not* have to involve either criteria or necessary and sufficient conditions – what is required of the theorist is to offer normative reasons in support of an account of political legitimacy. Located in the space of reasons with this normative task at hand, however, the “fundamentally *critical*” (Fossen 2017, 10) role of Brandom’s theory seems to be of no assistance at all to the theorist. Fossen is

1] Brandom, *Making it Explicit*. Cf. pp. xiii-xvii in the preface for an introduction of Brandom’s overall strategy, and chapters 3 (esp. sections II and III), and 5 (esp. section I) for central parts of the more detailed account.

right that a focus on stance-taking always opens the *possibility* of “articulating a new way of understanding what we are doing,” but he is wrong in believing that this will in itself enable us to do things *better* (Fossen 2017, 10). Because in certain social and political contexts, it may turn out that ‘better’ entails (in Fossen’s ‘taking-something-as’-sense) that an authority ‘legitimately’ eradicates people on the basis of the colour of their skin, or that actual power makes a rule legitimate. Fossen points to the affinity between pragmatism and political realism, but not even realists would accept that legitimacy can ever be ‘might is right’.

By contrast, ‘better’ for the normative theorist means more justified from a normative point of view, e.g. that we ought to do X (better) rather than Y (not as good). As normative theorists, we are all in the same boat when it comes to first order theorizing: we need to argue by way of giving reasons, justifying our claims through other claims, eventually reaching ‘the level of bedrock,’ in this case the normative premises we take as valid but have no further reason for (Wittgenstein 1953, §217; Brandon 1994, 661).² So whether or not Fossen’s pragmatist approach will turn out to be successful for theorizing legitimacy depends, rather than on Brandom’s theory, on what limits to legitimacy he presumes are set by our social and political practices.

Numerous theorists in current theoretical debates share Fossen’s commitment to stressing the importance of practices, but they explicitly attempt to answer these questions. According to political realists, for example, in order for a political order to be legitimate, the agreement or willing consent among the citizens must be perceived as free, and thus cannot rely on means that are too tyrannical or be the result of total deception (Horton 2010, 431-38; Williams 2005) According to practice-dependent theorists, likewise, the coercive practice of slavery can never be just since it is not capable of being “justified to all participants” (Sangiovanni 2008, 163).

To be fair, Fossen is clear about not having developed a positive account of political legitimacy yet. Still, he argues that developing such an account “would require developing a perspicuous representation of political practices, analogous to that offered by Brandom for discursive practices in general” (2017: 10). But, again, our point is that without normative glasses, such a perspicuous representation of political practices would be normatively toothless.

Hence, while we agree that conceptual analysis on a pragmatist outlook may have exactly the critical role that Brandom envisages, namely, explicating concepts to open them up to rational criticism, it does not help us in our endeavour to argue that female circumcision is wrong. For this normative task, language is entirely unreliable. For sure, the work of Brandom and Wittgenstein may still offer a theoretical framework for the type of political theory that attempts to find a more contextual answer to the question

2] Note that while each participant in discourse would eventually reach this bedrock state, for a Sellarsian anti-foundationalist such as Brandom, there is of course no *justificatory* bedrock, no ‘given’ proposition that is justified by itself: c.f. e.g. Brandom *Making it Explicit*, 1994, 215-17.

of what is legitimate (Fossen) or democratic (Mouffe, Norval, and Tully), and so on. It may also supply a fitting terminology for describing what goes on in political action and discourse. However, we should not mistake this inspiration for an argument for such an account.

eva.erman@statsvet.su.se

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REFERENCES

- Brandom, Robert. 1994. *Making it Explicit*. Cambridge: Cambridge University Press.
- Erman, Eva, and Niklas Möller. 2014. Brandom and Political Philosophy. *Journal of Political Philosophy*.
- . 2015. What Not to Expect from the Pragmatic Turn in Political Theory. *European Journal of Political Theory* 14 (2): 121-40.
- Fossen, Thomas. 2013. Taking Stances, Contesting Commitments: Political Legitimacy and the Pragmatic Turn. *Journal of Political Philosophy* 21: 426-50.
- . 2017. Language and Legitimacy: Is Pragmatist Political Theory Fallacious? *European Journal of Political Theory*. DOI: [10.1177/1474885117699977](https://doi.org/10.1177/1474885117699977).
- Hofstadter, Douglas R. 1985. Heisenberg's Uncertainty Principle and the Many Worlds Interpretation of Quantum Mechanics. In *Metamagical Thomas: Questing for the Essence of Mind and Pattern*. New York: Basic Books.
- Hooker, Brad, and Margaret Little. 2000. *Moral Particularism*. Oxford: Oxford Clarendon Press.
- Horton, John. 2010. Realism, Liberal Moralism and a Political Theory of Modus Vivendi. *European Journal of Political Theory* 9 (4): 431-48.
- Mouffe, Chantal. 1999. Deliberative Democracy or Agonistic Pluralism? *Social Research* 66 (3): 745-58.
- . 2000. *The Democratic Paradox*. London: Verso.
- Norval, Aletta. 2006. Democratic Identification: A Wittgensteinian Approach. *Political Theory* 34 (2): 229-55.
- Sangiovanni, Andrea. 2008. Justice and the Priority of Politics to Morality. *Journal of Political Philosophy* 16 (2): 137-64.
- Tully, James. 1989. Wittgenstein and Political Philosophy: Understanding Practices of Critical Reflection. *Political Theory* 17 (2): 172-204.
- . 2002. Political Philosophy as a Critical Activity. *Political Theory* 30 (4): 533-55.
- Wittgenstein, Ludwig. 1953. *Philosophical Investigations*. Oxford: Blackwell.
- Williams, Bernard. 2005. *In the Beginning was the Deed: Realism and Moralism in Political Argument*, ed. Geoffrey Hawthorn. Oxford: Princeton University Press.

