

# **“When Power Evaporates from Our Arms”**

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## *Introduction*

Bluntly, the biggest political challenge of the 21<sup>st</sup> century is creating enough legitimate coercion for our needs. Legitimate power in the form of coercion is in danger of slipping from our grasp, and as we create more it slips away again, evaporating as if into thin air.

Today we need collective power far more than ever before. And the kind of power we need is coercive power – the threat of sanction and the use of force. Not power with, or power to, but power over.

This is the kind of power that Hannah Arendt described as “violence” and opposed with all of her intelligence and rhetorical skill. It is the kind of power that Habermas in his early work, borrowing from a long European tradition, denounced as “will” and contrasted with “reason.” It is the kind of power that he promoted the public sphere to oppose.

This is coercive power. I want you to embrace it.

Worse yet, I want you to embrace state power. We are all justifiably suspicious of state power. But the absence of state power creates a vacuum that is often immediately filled by social domination. Because we need state power, we should try to make that power as legitimate as possible -- even though it can never be fully legitimate. The task entails asking what legitimacy should mean, because just as we use state power we must also resist it. When we resist it, we should focus on the most illegitimate power. When we use it, we should make it as legitimate as possible. I stress the state because, among other reasons, it is today one of the least legitimate institutions that we need to improve our lives.

My argument will take the following form:

I. First, I use the logic of the free-rider problem to demonstrate the necessity for coercive power, and particularly state power.

II. Second, I ask the normative question of what legitimacy entails.

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I suggest a new way to investigate normative legitimacy by taking cues from perceived legitimacy.

I point out that the standards of legitimacy are all regulative ideals – meaning that they can never be fully achieved. So we must speak of a spectrum of “relative legitimacy,” not legitimacy and illegitimacy as dichotomies.

I direct attention to normative legitimacy not only at the law-making level but at the point of application.

I advance the idea of contingent ideals – ideals that are not absolute, but that apply in some contexts and not in others.

I use the legitimacy of descriptive representation as an example of the normative insights that can derive from taking perceived legitimacy seriously.

III. Having established the need for coercive power and the need to understand relative normative legitimacy better, I suggest a few innovations that might marginally increase democratic legitimacy.

IV. Finally, I turn to the fragility of legitimate coercion and the ease with which it can evaporate from our arms.

### *I. Coercion and the free-rider problem.*

Let me begin by defining what I mean by “coercion.” By coercion I mean coercive power. I define power as peoples’ preferences and interests causing -- or changing the probability of -- outcomes. *Coercive* power is causing or changing the probability of outcomes not through the force of the better argument, but through the threat of sanction or the use of force.

The elements of coercion – the threat of sanction and the use of force -- are bad in themselves. Why then embrace coercion? Because we need it to get the things we all want and need. Much of what we want and need consists of -- or depends on – what I shall call free-access goods. Free-access goods create free-rider problems. And we usually need coercion to solve free rider problems.

The logic of the free rider problem – or more traditionally, the collective action problem -- is today old news. But when the logic was discovered for the first time between 1950 and 1965, it was a breakthrough comparable to slowly uncovering the laws of supply and demand. Although the idea made a splash in the social sciences, it soon became only one catchphrase among many in the intellectual arsenal of those familiar with economic thinking. The result of this trajectory of boom and crash is few university students today understand either the logic or its

consequences. One reason is that usually economists have taught this logic, and for many of them it is just a side-issue to the market. Moreover, at least in the United States, they do not teach it simply or clearly.

It becomes easier to explain this logic if we adopt a new term, which I believe is more accurate and clearer than the traditional term. That term is “free-access good,” meaning a good that, once produced, anyone can use without paying. The defense of a country is a free-access good, meaning that once someone provides it, all can enjoy the benefits, whether or not they contributed to producing it. Law and order is a free-access good. So are toll-free roads. Ending global warming, could we achieve it, would be a free-access good. When a good is a free-access good, anyone can reap the benefits without paying once it is produced.

Economists sometimes call a free-access good a “public good.” But they define a “public good” to include “non-rivalness,” meaning that the good cannot be used up -- a characteristic inessential to our problem and that distracts from it. Some writers call this kind of good a “non-excludable good,” but as Duncan Snidal pointed out more than 30 years ago, once the good is used up, future users are excluded. The term “free-access good” avoids both of these problems.

The importance of free-access goods is this: whenever we want a free-access good, we face a free-rider problem. The logic is clear: When anyone can reap the benefits of a good without paying, everyone has an economic incentive to use the good and not pay – that is, to free-ride on the effort of whoever has paid to produce the good.

The free-rider problem hangs entirely on the character of a free-access good.

When we want to produce a free-access good, we often cannot rely only on solidarity and duty to produce it. Then we need coercion. In small societies, such as the family, village, or tribe, social retribution serves as an effective informal form of coercion. In large societies, anonymity makes social retribution far less effective. In large, anonymous societies, we need the formal coercion of the state. State coercion presents a major design problem. We must try to design the coercion in such a way that it does not drive out solidarity and duty, because these motivations lead many to contribute to the common good voluntarily. Although extrinsic motivation tends to drive out intrinsic motivation, some designs make extrinsic coercion compatible with intrinsic solidarity and duty, and those are the designs we should adopt. Where we can substitute solidarity, duty, or “nudges” for coercion, we should do so. Finally, we must make the necessary coercion as legitimate as possible. That is the task to which I will turn today.

Today we need *more* state coercion than ever before in history. There are two reasons for this dramatic expansion in our need for state coercion.

First, a number of free-access goods previously supplied by nature – such as clean air, clean water, fish in the sea, and a stable climate can only be preserved with more and more state

coercion. We cannot get as many of these goods as 7 billion people now need without state coercion.

Second, we are today more and more dependent on one another, and that interdependence requires the multiplication of free-access goods. Today in North America we can buy blueberries in winter. When I was a child, blueberries came once a year, in the summer. Today I can buy blueberries in the supermarket in January. To provide those blueberries, the free market is backed by the state provision, through coercion, of thousands of free-access goods. Chile, the source of the great majority of blueberries that come to the US in the winter, has some of the strictest food safety standards in the world – a free-access good. The Chilean government also provides its blueberry farmers with useful agricultural innovations and up-to-date information about the market for blueberries – both free-access goods. Getting the blueberries to the US requires the obvious free-access goods of roads, ports, airports, emissions standards, and law and order. Many more free-access goods support this one free market transaction. The interdependence that brings both blueberries and cheap clothing to people in Africa rests on a huge infrastructure of free-access goods.

The point is that logic of the free market cannot provide free-access goods. In most cases, at the level of a large society only state coercion can provide free-access goods.

On the global level, the world is now facing its greatest historical challenge – global warming. A stable climate is a classic free-access good. Once produced, we all benefit from it, whether or not we have contributed to helping produce it. Because it is a free-access good, in most cases people will try to let someone else produce it and free-ride on the others' contributions. Although the necessity of state coercion for preserving climate stability is glaringly obvious, in the United States, hardly anyone mentions that necessity. Even our environmental groups stress individual action based on duty and solidarity. Al Gore's path-breaking movie, "An Inconvenient Truth," suggested toward the end actions to remedy the problem, and almost every suggestion was an individual action. The current mantra in the United States is both individualistic and entirely voluntary: "Reuse, Recycle, Reduce." The logic of the free-rider problem is almost unknown. The need for state coercion is ignored.

## *II. Legitimacy*

I now turn to the question of legitimacy. The most efficient form of coercion, as well as the most morally defensible, is coercion that is as legitimate as possible. It is this partially legitimate coercion that I am asking you to embrace.

Among the most famous lines in all of political philosophy are those with which Rousseau began *Le Contract Social*: "L'homme est né libre, et partout il est dans les fers. ... Comment ce changement s'est-il fait ? Je l'ignore. Qu'est-ce qui peut le rendre légitime ? Je crois pouvoir résoudre cette question. »

Today, with our knowledge of the free-rider problem, our position is exactly the opposite from Rousseau's. We do not have to say, «Comment ce changement s'est-il fait? Je l'ignore. » Now we do know. That change comes about because we want and need free-access goods. Our need for free-access goods produces the free-rider problem that we then need legitimate coercion to resolve.

Yet although we now know the answer to Rousseau's first question, we cannot be as confident as he about the answer to his second question – how to make the coercion that we need as legitimate as possible, taking human beings as they are and institutions as they might be.

Rousseau himself had no idea how to make coercion legitimate in a polity as large as France, much less the EU or the globe. Wars, of course, tend to enhance perceived legitimacy at home, at least at first. So does prosperity. So does widespread agreement on state policies. The job of the democratic process, however, is to produce as much legitimacy as possible in the *absence* of war, prosperity, and widespread agreement. We are currently failing to produce much state legitimacy. Habermas's *Legitimacy Crisis*, came out in 1973, forty-two years ago.

Today in many nations of Europe and in the United States we watch the perceived legitimacy of our representative institutions plummet far lower than in 1973. Many of us respond to this plunge in legitimacy with a kind of detachment, as we might in response to the rain, a natural event beyond our control. We may even respond with angry, moralistic satisfaction, thinking internally, “It serves them right.” I feel this sentiment myself. It does indeed serve “them” (*les ils*) right. As inequality has increased and global corporatism has grown in power, state legitimacy has inevitably and rightly decreased.

Yet this decrease in legitimacy is not just a problem for *les ils*. It is a problem for us.

It is a problem because just as the perceived legitimacy of our representative institutions is decreasing every day before our eyes, our *need* for legitimate coercion is dramatically increasing.

When we consider the ultimate free-access good, a stable climate, we can see that the future of the human race depends on the achievement of far more state-based legitimate coercion than we now have, and that this will be extremely hard to achieve. Figuring out how to bring about enough relatively legitimate state-based coercion will take a lot of human thought and energy. When achieved, legitimate coercion is precious. But it is also fragile. It can escape from our arms in a puff. Making the coercion we need legitimate is a major outstanding problem for humankind.

Turning now from the practical problems of legitimacy to its normative study, I want to introduce a new way of investigating legitimacy. Normative theorists traditionally contrast *perceived* legitimacy -- which can include manipulated or manufactured legitimacy – to *normative* legitimacy, the arguments for which can stand up relatively well to critical scrutiny. Several scholars have recently suggested rethinking this traditional opposition. My own

proposal for rethinking rests on taking perceived legitimacy as a source of insights for normative legitimacy. When thoughtful people persist in perceiving a situation as legitimate despite the standard arguments to the contrary, we need to investigate the possible normative underpinnings of their deviant perceptions. Investigating these everyday perceptions can reveal sources of legitimacy that current political philosophy has not tapped, or not tapped as fully as it could. Social perceptions may, in other words, sometimes be ahead of philosophical perceptions. The people may be ahead of the professional thinkers.

Investigating the sources of normative legitimacy in perceived legitimacy does not obliterate the distinction between normative and perceived legitimacy. It only shows that the boundaries between the two categories are not impenetrable.

From this perspective, I will advance descriptive representation as an example of how we can derive new concepts of normative legitimacy by investigating an instance of perceived legitimacy. As we look at four examples of descriptive representation, I would like us to consider three broader points.

First, the various ideals on which legitimacy rests – ideals such as equal power in the aggregative moments of democracy – are usually *regulative ideals*. A regulative ideal, as Kant described it, is a standard at which to aim, expecting that full achievement will be out of reach. Christ's words, "Be perfect, as thy heavenly father is perfect" advance a regulative ideal. No one is expected to reach this standard, only to aim at it. In aggregative democracy, the ideal of equal power (e.g., one person/one vote) is also a regulative ideal. Power will never be fully equal; some subset will always, at the very least, set the agenda. In deliberative democracy, the ideal of no coercive power in communication is also a regulative ideal. This state can never be fully achieved.

If the standards that go into creating normative legitimacy include regulative ideals, it follows that such legitimacy can never be a dichotomy – something that a regime either has or does not have. It must lie along a spectrum, so that any regime is more or less legitimate, rather than simply legitimate or illegitimate.

If full legitimacy can never be achieved, it also follows that the state coercion I am asking you to embrace in order to produce the many free-access goods the world desperately needs can never be fully legitimate either.

The not-fully-legitimate coercion that we must use to achieve our good human ends will always be a patch-work, sewn together from different pieces, based in different ideals, sometimes even ideals that conflict. If we are lucky, we might manage to reach the standard of "good enough for use," even though we never achieve full legitimacy.

Second, almost all the work on the sources of possible legitimacy for state coercion has focused on the law-making level. That was Rousseau's focus, and it has been the focus of most political theory since that time. Yet we must also look for sources of political legitimacy at the *point of application*, where coercion is applied to individuals. The sources of legitimacy at the point of application are often the same as the sources of legitimacy at the law-making level.

Third, in many examples of legitimacy, the ideals on which they are based are *contingent*, not absolute. Those ideals apply (or apply with the greatest force) in some situations and not others. I will have to leave to the future my exploration of that point.

So, keeping in mind that the normative ideals we are looking for are regulative ideals that cannot be fully achieved, that they apply not only at the law-making level but also at the point of coercion, and that they have contingent, not absolute status, let me go to some examples that illuminate two bases for the normative status of descriptive representation, each dependent on contingent circumstances at the law-making level and at the coercive point of application.

By descriptive representation I mean the idea that both in legislation and in implementation a state law or regulation is more legitimate if those who draw up that law and apply it have politically salient characteristics in common with the members of the population. In the legislature, from a descriptive perspective the laws are arguably normatively legitimate to the degree that the politically relevant experiences in the population are brought into the decision-making body in rough proportion to the numbers of citizens who themselves have had those experiences. For deliberation, the legislature needs at least what Will Kymlicka calls "threshold" representation of these different experiences. Yet both because all externally similar descriptive groupings are internally heterogeneous and because any legislature has committees and multiple venues, threshold descriptive representation in practice translates into proportional descriptive representation.

Before the early 1990s, most political theorists opposed descriptive representation as a normative ideal. The liberal J. Roland Pennock wrote, in a much-used textbook on democratic theory, "No one would argue that morons should be represented by morons." My friend Iris Young, a Marxist and a feminist, also thought that representative institutions should be judged by how well the representatives represented individuals and the public's interests, not the way those representatives looked. I agreed with these conclusions. But as I consulted my feelings as a voter and citizen, I noticed that despite these good arguments I still wanted more women in Congress. On consideration, I decided that this desire was not just an emotional mistake. Instead, I came to argue, there are at least two contingently valid reasons why descriptive representation might increase the normative legitimacy of the resulting laws, not just their perceived legitimacy.

The first set of reasons involves contexts of *uncrystalized interests*.

Descriptive representation can be of great importance when interests on a particular issue are uncrystalized – that is, the issue has not previously been much discussed in the regular political process and no representative or political party had taken a stand on it.

Consider first an instance of the descriptive representation of uncrystalized interests in the *law-making* arena. In the United States in 1991, the issue of sexual harassment had not yet come up in the political arena. None of the parties had discussed it or taken stands on it. No representative running for office had ever mentioned it. Yet when the U.S. Senate denied Anita Hill the opportunity to testify at the hearings on Clarence Thomas ‘s appointment to the Supreme Court, it was women from the House of Representatives who charged up the Senate steps to demand that she be heard. Their move set in motion a series of events that eventually created what became known as “The Year of the Woman,” resulting in a significant increase in female representatives in the U.S. Congress. The move, however, would never have been taken if there had been no women, or perhaps only one or two, in the House of Representatives. The issue was not crystallized. No male representative, with all the good will and desire to represent the interests of women he may have had, would have acted in quite this way. The women reacted spontaneously, drawing on their own experiences, reaffirmed one another in their reactions, and decided together quickly what to do.

Consider now descriptive representation at the *point of application* of coercion when interests are uncrystalized and unexpected. In this case, at least hypothetically, a lower-level Muslim woman state official in a European office of immigration might well understand better than others the uncrystalized interests of a Muslim woman coming for help when none of the existing rules obviously address those needs.

The second set of reasons for descriptive representation arises in contexts of a *history of communicative mistrust*.

In a context of communicative mistrust, members of a subordinate group often have become used to not being heard. They expect their arguments to fall on deaf ears. They may take friendly advice as criticism. They have less access to the subtle cues of mutual understanding that dominant groups have developed. For these reasons and others, in the United States, African Americans are more likely to contact African American law-makers than white law-makers. African American lawmakers, in turn, are more to respond to African American citizens reaching out to them, even if those citizens come from another district. Much the same dynamic may operate in Europe. When a party runs a candidate from an immigrant background for office, voters with an immigrant background may well be more likely to approach that candidate after a speech to ask a question or share an experience.

Communicative mistrust also applies at the point of application of coercion. The functionary at the point of application is a representative *of* the people *to* the people. To increase legitimacy, that functionary should have several communicative tasks: communicating to the coerced the

reasons behind the law; communicating the respect that identifies the coerced as a law-giving equal; and engaging in two-way communication with the coerced, so that both parties may mutually identify the injustices within the law and act on them constructively.

Last year in Ferguson, Missouri, for instance, when the protest against police violence seemed to be turning into a riot destroying businesses and savings in the Black community itself, the governor of the state gave control of security operations in Ferguson to Captain Johnson, a member of the highway patrol, not the trained security forces. As one of his first acts, Johnson, who is African American, joined the protestors and marched *with* them. His being black allowed him to surmount the wall of communicative distrust.

Principle 8 of Robert Peel's "Principles of Policing" states that "the police are the public and that the public are the police." Ideally, the functionary at the point of application of coercion should be a representative of the public to the public. If descriptive representation facilitates this task, it has positive value in legitimating coercion.

Please note that I am *not* saying descriptive representation is *required* for legitimacy. I am saying that it can be *one piece* of the quilt of legitimacy. Descriptive representation does not insure good representation of uncrystallized interests, or good communication, or good lawmaking, or the good administration of any form of state coercion. But descriptive representation can be particularly important in particular *contexts*, such as a context of uncrystallized interests or a context of communicative distrust.

In short, I am introducing *contingency* to normative theory. I am saying that an ideal or a component of legitimacy can be more or less important in particular contexts. It follows that if implementing this ideal has costs, a good polity ought to be willing to pay higher costs to approach that ideal in some contexts than in others.

In this case, I have used the *perceived* legitimacy of descriptive representation among members of a marginalized group to open up an investigation of the *normative* sources of perceived legitimacy. I have concluded that the importance of descriptive representation in generating legitimacy is contingent not only at the law-making level but also at the point of application.

By way of investigative methods, therefore, I suggest that as we try to understand the patchwork quilt of potential and existing sources of democratic legitimacy, we take the perceptions of our citizenry seriously, as providing possible normative insight.

Again to be clear, I am *not* saying that because we cannot *achieve* the substantive representation of interests without descriptive representation, we must *settle* for descriptive representation as a more realistic next best. I am saying that the traditional ideal of representation itself is not sufficiently nuanced. It is one-dimensional when it should be more contextual and contingent.

Thus the legitimate coercion I am asking you to embrace not only lacks full legitimacy but is also contingent.

### *III. Innovations*

In this contingent, unsatisfactory world where legitimacy is never full, do we have any new ways of making that coercion more legitimate? It is a mistake, I think, to focus attention solely on elections, as many people do who want to reduce the EU's democratic deficit. Elections will usually be the spine of legitimacy. But they are a frail spine on which to build. Elections can be thin, impersonal, and distant. Citizens want, among other things, to be heard. Perceived legitimacy rests not only on the laws being responsive to the citizenry but on citizens being able to recognize the timbre of their own voices in the law at the moment it coerces them.

What innovations can bring public voices recognizably into both the law-making process and coercion at the point of application? I will suggest only one. At the law-making level, small additions to legitimacy could perhaps be created on critical occasions by inserting a randomly selected body of a few hundred citizens into some point in the electoral process, perhaps at the level of party selection. Such citizen bodies selected by lot could also provide a resource for elected representatives facing difficult decisions, when the representative needs to respond to angry constituents who are less concerned with good policy than with their own needs, or are suspicious of a sell-out. Whenever the citizenry holds the body of elected representatives in suspicion, a randomly chosen group of citizens, making public the reasons for their conclusions, may give the public good reasons not to suspect a legislative outcome. To produce these effects on perceived legitimacy, such randomly chosen citizen bodies need to be large enough to be statistically descriptively representative, well-funded enough to attract the marginal participants who would otherwise decline to participate, and well publicized enough so that most citizens could see themselves in the members of the group.

As for innovation at the point of application of coercion, it would help to teach the representatives of the public to the public how to listen. If we were to think this issue through, we might find ways of rewarding functionaries for listening and perhaps even punishing them for their failures to listen.

On both the law-making level and the point of application, it goes without saying that reducing illegal corruption increases legitimacy. It would also help greatly to reduce what we now call "institutional corruption" -- the legal corruption of the political system by the inordinate power of moneyed interests. These reforms are sometimes thought to be the obsession of do-gooders. I see them as necessary for the creation and preservation of relatively legitimate coercion.

I have no time here to expand on the possible innovations that would increase not only the perceived legitimacy of the laws but also their underlying normative legitimacy. My point is only that a search for such innovations is greatly needed as our human needs for legitimate state coercion increase over time.

#### IV. *The fragility of legitimate coercion*

Legitimate coercion is hard to achieve and easy to lose. Today's citizens are, in Pippa Norris's phrase, "critical citizens." Rightly so. We are all aware of the many surface abuses of state power. Some of us are aware of the more subtle but pervasive biases in the rule of perhaps even the well-meaning members of the *noblesse d'état*. Steady, creeping inequality has made us realize that we -- the citizenry that says repeatedly on surveys that we want more equality -- are not in charge. We are all aware of the surveillance powers of the modern state. Partly because of the justified distrust deriving from these insights, our institutions no longer supply the legitimacy they once did. What little legitimacy they retain is fragile and dwindling.

The coercion we can impose upon ourselves in practice thus grows ever less legitimate. Yet, as I have pointed out, we have every day greater and greater needs for legitimate coercion to produce the free-access goods on which our current way of life depends.

If I were speaking tonight to heads of state and the tycoons of business I would try to make them understand how vitally important legitimate coercion is -- and how fragile it is, how prone to evaporate into thin air. As a current example of that fragility, think of the new mayor of Barcelona, Ada Colau. Colau won her election with a relatively small majority. One might equate that low margin with low legitimacy. Yet she won the election with the backing of many citizens who had previously felt disenfranchised. For them the established government had almost no legitimacy. One of the most popular chants of the 15 M movement was, "No nos representan!" -- they do not represent us. When Colau was elected, the people in the streets shouted, "Que si, que si nos representan!" -- Yes, they represent us! Colau is what I call a "gyroscopic" or "selection model" representative. Her past commitments and her past history have sent those who selected her a costly signal, a real warrant that she is intrinsically motivated to move in a direction they approve.

Now Colau has in her arms a precious resource of legitimacy among the people who elected her. For that reason the city has in its arms a precious resource as well. She may not understand that to build up that resource she must now reach out to the business community, the banks, and the university business schools, while at the same time explaining to her constituency why she is doing this -- explaining this necessity in their own terms, using, with warrant, the symbols of her past commitments to underscore the continuing reality of her intrinsic motivation. Both she and her opponents could realize that they can build together on this fragile node of legitimacy for the good of the city as a whole. Yet her opponents may well want to destroy her. And she may well disdain them as the enemy. Neither the mayor and her party nor her opponents may see how fragile and precious is the legitimacy she has created among the rightly distrustful citizens of the city. They may not see that legitimacy as something that must be nurtured, protected, built upon, and not allowed to evaporate.

Not only heads of state and business but also citizens and, most to the point for us today, political scientists have a role in the construction of legitimate state power. The “resistance tradition” in liberalism has sensitized all of us to the possible abuses of state power. In practice we have also developed some good, although not yet sufficient, ways of resisting illegitimate state power. That tradition, however, has tended to blind us to ways of identifying legitimate state power and helping to build that legitimacy. At the same time that together we build new forms of resistance to increasing state power, we must also try together to build more capacity for legitimate state power. Legitimate coercion is fragile as the trust of a baby who’s been dropped. It evaporates in a puff. From Africa to the EU to the banlieues of Paris and the corridors of Washington, we are letting what little legitimate power we have had evaporate from our arms.

Across the globe, political science is the only organized community tasked with the job of trying to understand, at a step removed from the hurly-burly of immediate decisions, how to create legitimate state coercion. Every one of the fields in political science – international relations, the study of a single country’s politics, comparative politics, political theory – and every one of its methods – interpretive, analytic, and normative; qualitative, quantitative, and rational choice – can contribute to this effort. The study of legitimate coercion is, I believe, the central task of political science. Human beings think socially. Few, if any, great ideas are the product of one person’s mind. And when we ask, of all the social groupings in the world, which is the best organized to think collectively about the problem of legitimate coercion, the answer has to be: “C’est nous.”

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Jane Mansbridge  
Association Française de Science Politique  
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Power = preferences and interests causing (or changing the probability of) outcomes.

*Coercive power = causing or changing the probability of outcomes through the threat of sanction or the use of force.*

I. **Coercive power.** Necessity ← the logic of the free-rider problem

Free access goods

Free access goods:

goods that, once produced, anyone can use  
without paying

Free access goods →

free rider problem

Free access goods →

free rider problem →

need for coercion

Free access goods →

free rider problem →

need for coercion

need for legitimate coercion

best if the legitimacy can stand up to  
normative scrutiny

Free access goods →

free rider problem →

need for coercion

+ anonymous society → need *state* coercion

best if the legitimacy of that state coercion  
can stand up to normative scrutiny

## II. Legitimacy

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- a) *Perceived* legitimacy → insights into *normative* legitimacy.

Normative  
Per ceived legitimacy



Normative legitimacy

Investigating the normative bases of  
perceived legitimacy

## II. Legitimacy

- a) *Perceived* legitimacy → insights into *normative* legitimacy.
- b) Standards of legitimacy all *regulative* ideals (can never be fully achieved)

Central ideals in democracy are regulative ideals, impossible to achieve.

Democratic aggregation: “The equal vote.”  
In the ideal, **equal coercive power**: impossible to achieve.

Democratic deliberation: “The force of the better argument.” In the ideal, **no coercive power**: impossible to achieve.

Because central ideals in democracy are regulative ideals, impossible to achieve,  
**no democracy is ever fully legitimate.**

Legitimacy is a continuum, not a dichotomy.

Because central ideals in democracy are regulative ideals, impossible to achieve, **no democracy is ever fully legitimate.**

Legitimacy is a continuum, not a dichotomy.

**The coercion we must use is also never fully legitimate.**

A patch-work quilt of ideals → legitimacy

## II. Legitimacy

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- c) Legitimacy at the *law-making* level and at the *point of application*

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**Example of a)-d):** *Descriptive representation.*

## Descriptive representation

The lawmakers mirror the population they represent in their own experiences – sometimes caused by their distinctive bodies, regional backgrounds, or occupations

## Descriptive representation

1. Appropriate response in moments of *uncrystallized interests*

(where the formal political system has not processed the issue fully or at all)



Lawmaking level

## Descriptive representation

2. Appropriate response after a history of  
*communicative distrust*

(where past interactions have led a  
marginalized group not to expect to be  
heard)



*Capt. Ronald Johnson of the Missouri State Highway Patrol in Ferguson on Aug. 15.  
(Photo: Lucas Jackson/Reuters)*

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Descriptive representation illustrates a) -d)

III. **Innovations** to marginally increase  
democratic legitimacy

1. Mistake to focus solely on elections.
2. At **law-making level**,  
Random selection + deliberation (well-designed)
  - large
  - sufficient incentives
  - well publicized
3. **At point of application**,  
Teach the representatives *of* the public *to*  
the  
public how to listen
4. Reduce/eliminate illegal corruption
5. Reduce/eliminate “institutional corruption”  
-- legal corruption by money

## IV. **Fragility** of legitimate coercion

Thinking through how to create enough  
legitimate coercion for our needs

Thinking through how to create enough  
legitimate coercion for our needs

Who will do it?

Thinking through how to create enough  
legitimate coercion for our needs

Who will do it?

We must.