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The Great Chain
of Legitimacy. Justifying
Transnational Democracy

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ABSTRACT

The idea of a 'chain of legitimation' is a central thought in German constitutional theory. However, the conception of a chain of legitimacy does not appear to be sufficient to justify transnational democracy. Starting from this diagnosis, the paper introduces an alternative conception of transnational legitimacy. In this conception, the layer of legitimacy provided by the chain of legitimation is complemented by a layer of legitimacy that is provided by political practices at the micro-level of the political process. Our conception of transnational legitimacy – which is based on a twofold concept of normativity that distinguishes between an explicit and an implicit dimension of normativity – presents a deeper understanding of where to locate the normative forces at play within the political process. The aim of the paper is to show that at the transnational level, democratic legitimacy can only emerge if the long and abstract legitimation chains are normatively backed by political practices that include explicit references to the will of the people as well as integrative, context-sensitive performances that prevent acts of exclusion.

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1. INTRODUCTION

There is a prevailing line of thought in German constitutional theory that democratic legitimation can only be established and sustained through an uninterrupted chain of legitimacy between the governmental body and the citizenry (Herzog 1971; Böckenförde 1991: 302).[1] To put it another way: the idea of a 'chain of legitimation' can be characterized as a "core concept of German constitutional law" (Bogdandy 2004: 902). However, a conception of legitimacy based on the idea that "all public acts ought to be retraceable to the democratic will of the people" (Keller 2008: 257) is faced with a serious problem when it comes to justifying transnational democracy. In an age of multi-level governance, the flow of legitimacy runs, or is expected to run, through channels that are long, winding and hardly retraceable.

Starting from this diagnosis, our aim is to introduce an alternative conception of transnational legitimacy: a conception that focuses on the level of political interactions at the micro-level of the political process. This conception adds to, rather than replaces, the above-described first layer of legitimacy. In our view, the problems affiliated with long, rather abstract chains of legitimacy, as in the case of transnational political orders, can only be addressed by providing a second, complementary layer of legitimacy. By doing so, we also seek to suggest a comprehensive understanding of the normative forces inherent in the political process. To develop this understanding, we introduce a twofold concept of normativity that distinguishes between an explicit and an implicit dimension of normativity.

In the following, our first step is to outline why, from our point of view, it seems insufficient to base a concept of transnational legitimacy solely on the idea of a 'chain of legitimacy'. Our second step consists of presenting a second, complementary layer of legitimacy based on a theory of political practices. The presented two-layered conception, an approach that integrates the idea of a chain of legitimacy and a practice-based theory of legitimacy, considers the entire political process to be the object of legitimacy judgements: Instead of focusing on the creation of an institution and the production of collectively binding decisions, we also take the implementation part of the political process into account, i.e. the process of securing the collective bindingness of decisions of transnational authorities.

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[1]   Ernst-Wolfgang Böckenförde introduces this idea by referring back to Roman Herzog's *Allgemeine Staatslehre* (Herzog 1971; see also Böckenförde 1982: 315 and Böckenförde 2004: 438).

The aim of the paper is to show that at the transnational level, democratic legitimacy can only emerge if the rather long and abstract legitimation chains are normatively backed by specific political practices.

2. THE 'DEMOCRATIC CHAIN OF LEGITIMATION'

The idea expressed by the metaphor of an uninterrupted 'chain of legitimacy' or a 'democratic chain of legitimation' rests on the assumption that public decisions derive their legitimacy from democratically elected representatives of the people. All governmental bodies acting with official authority have to be appointed directly or indirectly by the people and – at least in principle – it must be possible to dismiss the appointed representative. One particularly important feature of this metaphor is the postulate that the chain is complete. In order to secure the legitimacy of public authority, the chain has to be uninterrupted. Each individual government official must be connected according to the order of the chain. From each individually appointed government official, a chain of individual acts of appointment has to lead back to the people as the bearer of sovereignty. Only an uninterrupted chain guarantees the legitimacy of the institutional system (Herzog 1971: 214; Böckenförde 1991: 302).

The metaphor of the chain (or similar images like flow or channel) highlights the derivation of legitimacy from a specific source. A chain follows the principles of continuity and gradation. Arthur O. Lovejoy's *The Great Chain of Being* (1936) renarrates the long history of the chain as a philosophical metaphor, the idea of the organic constitution of the universe from the platonic origins to the medieval theology and up to the modern philosophies of Leibniz, Spinoza and Kant. In this reading of the Western philosophical tradition, the universe appears as a series of links ordered in a hierarchy of creatures, from the lowest and most insignificant to the highest, following the three principles of plenitude, continuity and graduation.

In the case of democratic legitimacy, the specific source and origin of legitimacy is the will of the people, the democratic electorate. If one tries to adapt this idea to the transnational level, an uninterrupted chain of legitimacy would have to run between national constituencies, their representative institutions on the national level and the political order on the transnational level. The idea of "accountability through democratic state consent" (Buchanan/Keohane 2006: 436) would still be the source of justification and the basis of legitimacy, but it would be necessary to transfer and translate its normative force to transnational authorities.[2] In normative terms, the acceptability of any po-

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[2] Helen Keller sums up this 'unitarian model of legitimation' as follows: "In essence, international law continues to be a system of rules that rest on the consent of the very states to which they apply. To the extent that international law is founded on state consent, then, the latter legitimizes the former. With regard to democratically organized

litical authority would still depend on the integrity of the chain of legitimacy. But there is a second important feature of the chain metaphor one should take into account: The fewer links there are in the chain, the higher the legitimacy assigned to the system. In analogy to the way the chain functions on the national level, a genuine democratic legitimacy of transnational orders would require a long and rather abstract chain of delegation from the citizens of the world to representative bodies of these polities beyond the nation-state.[3]

Apart from the difficulties resulting from this 'ideal version' of a transnational chain of legitimacy, there are other points of criticism related to a mere adaptation of the chain metaphor to the transnational level: The idea of a democratic chain of legitimacy focuses exclusively on the macro-level of a polity and is merely interested in the institutional design of transnational democracy. Therefore, the chain metaphor provides a judicial perspective that centres on the constitution of rules and norms and neglects the implicit normativity inherent in the political process. Furthermore, the chain concept contains an ex ante component: Whatever a democratically constituted political body does under the rule of law is considered to be legitimate. As a consequence, potential dynamics within the processes of rule implementation are neglected. In addition, the democratic chain of legitimation seems to overemphasize the concept of legitimation by elections and appointments. Finally, the democratic chain of legitimation is based on specific criteria that democratic decision-making processes have to fulfil, i.e., it focuses on the establishment of bindingness and neglects the processes that secure the binding character of an approved regulation. The securing of binding authority and the bindingness of rules at the transnational level are faced with a twofold problem of compliance: Compliance between the transnational order and the nation state and between the states and their national constituencies.

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states, a conceptual shift in the location of legitimacy may be assumed. As in these states all public acts ought to be retraceable to the democratic will of the people ("chain of democratic legitimation" […]), a two-level consent for international norms can be pictured: directly, through the role of states in the context of international norm creation (international legitimacy); indirectly, through the legitimizing effect of the state's popular will as warranted by the democratic principle (domestic legitimacy)" (Keller 2008: 257-258).

[3] Or, as Thomas Frank puts it: "The textbook solution to this would be a world governance through directly elected representatives. Since this is not about to happen, a second-best approach is to ensure that those who speak in global discourse themselves represent democratically elected governments. That way, the outcomes of diplomatic discourse may at least claim to manifest the valid consensus of all those at interest. Fortunately, the global system, of late, has begun to make some progress towards such secondary democratic legitimation." (Franck 1999: 261-262; see also Keller 2008: 258).

As already mentioned, the idea that the legitimacy of transnational institutions rests on democratic state consent at the national level entails a very long chain of legitimacy – a chain that consists of a large number of chain links. The first part of the chain connects the citizens with the decision-making bodies and the head of the executive at the national level, and the national executive with organizations on the transnational level. This part can be referred to as the democratic part of the chain. The second part consists of the twofold process of implementation running from transnational institutions to national bureaucracies and from national bureaucracies to the citizens of the respective nation state. This second part is a political process of securing compliance by bureaucratic order. It can be referred to as the hierarchical part of the chain.

But what are the legitimation effects of this long chain of hierarchical orders? In our view, a normative theory of legitimacy has to develop a comprehensive understanding that includes the totality of the political process. This comprehensive understanding has to integrate the hierarchical part – i.e., the processes of securing political bindingness by bureaucratic order – into a conception of transnational legitimacy. In our view, a conception merely based on the idea of a democratic chain of legitimation neglects the question of how global governance affects the level of political interactions at the micro-level of the political process. More specifically, it neglects the problems that arise from the necessity of long-distance compliance. These problems can only be faced if one integrates the dimension of in-process or implicit normativity into a conception of transnational legitimacy.

To sum up, an alternative conception of legitimacy: (1) has to establish a set of criteria referring to the political process as a whole, ranging from the establishment of binding agreements to acts of securing the bindingness of collective decisions, (2) has to concentrate not only on the creation or foundation of political institutions, but also on the quality of processes at the global/transnational level and (3) has to focus on the micro-level of interaction. As a consequence, our proposition for an alternative conception of legitimacy can be stated as follows: A political order is legitimate only if and when the entire political process is taken into account – from the creation of institutions up to everyday acts of compliance.

3. A PRACTICE-BASED THEORY OF LEGITIMACY

Our suggestion is to develop a conception of legitimacy that meets the above-described standards, and to base the idea of a second, complementary layer of legitimacy on a theory of political practices. Our alternative conception rests on the assumption that legitimacy is also a product of specific sets of political practices, not only a system of legal rules. It identifies the micro-level of political interaction as the decisive level at which the willingness of the citizens to comply with their obligations and the everyday

implementations of decisions made by the political system co-occur. As a consequence, the criteria that measure the legitimacy of a political order have to be located within the dimensions of explicit and implicit (or in-process) normativity.

The idea of a second, practice-based layer of legitimacy offers a process-oriented, interactionist perspective on legitimacy. It focuses both on political practices that establish bindingness and on practices securing the bindingness of collective decisions, i.e., practices that have the function to secure compliance with existing regulations. In addition, a practice-based theory of legitimacy provides a comprehensive understanding of the normative forces at play within the political process.

3.1. Establishing Collective Bindingness

The presented suggestions concerning the practices of securing the bindingness of collective decisions have to be understood in the context of a practice-based approach we developed earlier (Weihe et al. 2008; Pritzlaff/Nullmeier 2009). This approach defines the establishment of collective bindingness as a tripartite sequence of interactions, a conceptual framework we refer to as the P-A-C scheme. This framework rests on the assumption that collective decision-making consists of a sequence of three significant acts, i.e., on the acts of proposal, acceptance and confirmation.

In short, a proposal (P) can be defined as an act directed towards an institution as a whole. Proposals occur in the form of draft resolutions, suggestions, appeals, demands, opinions, wishes, etc., that are raised to serve as a basis for a collectively binding decision of the institution. An act of acceptance (A) signalizes approval (A+), refusal (A-) or other forms of response (even indifference, A0) to a proposal. Acts of confirmation (C) are acts that reaffirm the decision previously initialized by acceptance-acts. Confirmation acts are reactions to acceptance-acts. While a-acts are utterances expressed on one's own behalf, confirmation-acts are uttered in the name of the institution as a whole.

The three elements can be outlined in more detail in the following way: A *proposal* (1) refers to a proposing agent, (2) comprises a communication mode, i.e., a specific way in which the proposing agent directs his request to the institution (suggestion, demand, appeal, opinion, wish, etc.), (3) needs to be addressed to all members of the institution and (4) has to convey a proposal content.

Formulated as a speech act, a minimal version of a proposal has the following form:

"Agent/speaker A (1) asks (2) the addressees (3) to decide x (4)."

By making a proposal, the proposing agent provides a content basis for a potential decision. The addressees, on the other hand, have to identify and acknowledge the proposal as a proposal in order to ensure the transition to the next step of bindingness-production.

Acceptances can be characterized as *reactions* or *responses* to the content of a proposal. A distinction between *singular* and *accumulative* a-acts may lead to a deeper understanding of a-acts and their role within the process of establishing collective bindingness. While each individual verbal or nonverbal response to a proposal may be classified as a singular a-act, accumulative a-acts are occurrences of temporal clusters of a-acts. Accumulative a-acts are simultaneously performed acts of self-positioning. They may appear in the mode of formal voting or a non-formal agreement, or at least may be an early stage version of one or the other. But the process of bindingness-production is not completed at this point. The mere result of accumulative a-acts is not identical to a binding agreement of the institution as a whole. In other words: The *bindingness* of the result itself needs to be articulated in an additional step, i.e. through an act of *confirmation*. In our view, the essence of the function of a confirmation act lies in the proclamation of the result in the name of the institution as a whole. While acceptance acts are uttered by individuals and from an individual perspective, confirmation acts mark a shift in perspective. The process of establishing bindingness moves from more or less simultaneously expressed individual utterances to utterances that express the formation of a 'we'. The term *confirmation*, therefore, designates all verbal and nonverbal acts that reaffirm the approval previously expressed through individual a-acts by signaling approval at the level of the institution as a whole.

By analyzing the micro-level of political processes in the suggested way, we are able to identify political practices – in the sense of typical sequences of interaction – that foster the achievement of binding agreements.

Through the actual performance of political practices, agents maintain, preserve and renew the implicit, in-process dimension of normativity. While the importance of explicit sources of normativity, like laws or regulations, is widely recognized, the second, in-process dimension of normativity is often neglected. Therefore, the following section serves to introduce a comprehensive understanding of normativity that includes two dimensions: explicit and implicit normativity.

3.2. Explicit and Implicit Normativity

The practice-based theory of legitimacy rests on the assumption that the binding forces at the basis of relations of legitimacy have two dimensions: Explicit references to normative sources and an implicit, in-process dimension.

In our view, transnational decision-making practices can only be regarded as democratically legitimate if explicit references to the will of the people occur in combination with integrative, context-sensitive performances that prevent acts of exclusion.

3.2.1. Explicit Normativity

If one considers the grounds of justification for political institutions and democratic processes, i.e. the sources of their normative binding character, laws and rules are the first things that come to mind. Political agents justify the legitimacy of political institutions, processes and decisions by explicitly referring to laws and formal regulations. Existing laws and regulations, laws and regulations that are in force at the time a decision is made, exert a binding force that is somehow conferred upon the newly established regulations. A regulation gains its normative force through the act of referring to other, previously made regulations. When thinking about the legitimacy of a decision, institutions and democratic processes that are valuated as legitimate seem to be the pivotal sources agents explicitly refer to. By referring back to an institution or democratic process through which the binding decision was achieved – an institution or process that is recognized as being legitimate – agents provide their claims and related undertaken actions with normative backing.

The term *explicit normativity* as we understand it comprises a range of sources to which agents refer in order to support and to justify a claim or a performed action, to substantiate a claim if challenged, or to normatively underpin a proposed decision option. Explicit references brought forward in discourse serve as argumentative backing for a position; they support objections in favour of or against a certain option. By explicitly referring to a source, agents promote the establishment of a common basis of commitment.

Following Christine Koorsgard (1996; 2008; 2009),[4] a suggestion would be to identify a range of fundamental sources to which agents explicitly refer. A preliminary suggestion for a typology of explicit normative resources securing the validity of regulations consists of the following elements: will, institution, world, reason and transcendence (Pritzlaff/Nullmeier 2009). While the notion of *will* comprises individual and collective agents and their interests and aims that are considered to be preeminent and legitimate, *institution* refers to socially prevailing laws, rules and principles. A reference to institutions like rules or laws, as described above, 'transfers' the normative force of previously made regulations to newly established regulations. References to conceptions of the *world* relate to conditions of the world, to 'objective facts' or to a state of

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4   "We live under the pressure of a vast assortment of laws, duties, obligations, expectations, demands, and rules, all telling us what to do. Some of these demands are no doubt illicit or imaginary – just social pressure, as we say (as if we knew what that was). But there are many laws and demands that we feel we really are bound to obey. And yet in many cases we would be hard pressed to identify the source of what I call the *normativity* of a law or a demand – the grounds of its authority and the psychological mechanisms of its enforcement, the way that it binds you." (Korsgaard 2009: 2).

affairs that seem to lie outside the agents' will or attitudes. The normative source of *reason* encompasses references to logic, rules of argumentation, cognitive competences, judgment, sapience and rationality. A reference to sources of *transcendence* may imply a relation to god or to forms of the extramundane (Ibid.).

The outline of a typology of explicit normative resources that secure the validity of regulations opens up a broader perspective on the sources to which agents might refer as grounds for justification – a perspective that exceeds a mere reference to legal norms or laws. These fundamental sources, as suggested in terms of the notions of will, institution, world, reason and transcendence, are normative resources agents *explicitly* refer to in order to support and to justify a claim, and to substantiate a claim if challenged.

As already mentioned, explicit references to compliance with existing rules and regulations constitute the prevailing type of reference employed to provide a political practice with legitimacy. In our view, though, democratic legitimacy can only be ascribed to a political practice that involves explicit references to the will of the people.

Although explicit sources of normativity other than legal norms or laws may be identified in the suggested way – for example if one analyzes the reasons and motivations uttered explicitly by agents participating in a decision-making context – they constitute only one component of a more comprehensive normative structure.

Conceptions that characterize normativity solely in terms of values, rules, regularities or preferences seem to identify normativity with a "special kind of entity" (Rouse 2007a: 48). Although the 'rule-following character' of a conception that identifies rules with legal norms seems to be more obvious than in the case of a conception that includes references to the will of the people, the idea behind it seems to be at least a similar one: Actual performances are 'linked' in one way or another to a rule or value standard that serves as an explicit reason and explanation for the correctness of a proposed decision option, a claim or a performed action. This finding seems to apply to the Kantian tradition. As Robert Brandom puts it, Kant's model of how to understand the normative status of correct and incorrect rests on the assumption that "what makes a performance correct or not is its relation to some explicit rule" (Brandom 1994: 18-19):

> For Kant, "explicit rules and principles are not simply one form among others that the normative might assume. Rules are the form of the norm as such. This view, that proprieties of *practice* are always and everywhere to be conceived as expressions of the bindingness of underlying *principles*, may be called *regulism* about norms. […] According to this intellectualist, Platonist conception of norms […], to assess correctness is always to make at least implicit reference to a rule or principle that *determines* what is correct by explicitly *saying* so" (Ibid.: 19-20).

What Brandom describes as regulism about norms might, in this context, be characterized as a one-dimensional conception of normativity, a conception comprising solely explicit sources of normativity.

Practices that aim at the establishment of bindingness, for example political decisions, are often analyzed in this one-dimensional way. This finding also characterizes one of the crucial points in the debate about so-called 'practice theories' (Schatzki et al. 2001; Reckwitz 2002; Stern 2003; Rouse 2007b). Stephen Turner, the most prominent critic of this school of thought, argued against conceptions of social practices as "rule-governed or regularity-exhibiting performances" (Rouse 2007a: 46; Turner 1994). But this criticism doesn't apply to all practice theories. Joseph Rouse, for example, introduces a conception of practice theory that incorporates the idea of an implicit dimension of normativity.

3.2.2. Implicit Normativity

According to Rouse's conception, "a practice is maintained by interactions among its constitutive performances that express their mutual accountability. On this normative conception of practices, a performance belongs to a practice if it is appropriate to hold it accountable as a correct or incorrect performance of that practice" (Rouse 2007a: 48). Rouse's characterization of practices rests on the assumption that their performances are integrated within the practice by "complex relations of mutual interaction" (Ibid.: 50), and that these patterns of interaction "constitute something at issue and at stake in their outcome" (Ibid.).[5] What is at stake in those practices is, as Rouse puts it, "perspectivally variant or open-textured" (Ibid.):

> "On such accounts, the normativity of practices is expressed not by a determinate norm to which they are accountable but instead in the mutual accountability of their constitutive performances to issues and stakes whose definitive resolution is always prospective. […] Performances of a practice are intentionally directed toward and accountable to "something" (an issue and what is at stake in that issue) that outruns any particular expression of what it is. […] Efforts to stand outside of an ongoing practice and definitively identify the norms that govern its performances are assimilated within the practice itself as one more contribution to shaping what it will become and how that future matters to present performance. […] Normativity on such a conception is an essentially tem-

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[5]   As Rouse puts it, "what is at stake in those practices is the difference it would make to resolve the issue one way

rather than another. But that difference is not already settled, and there is no agreed-upon formulation of what the

issues and stakes are. Working out what is at issue in these practices and how the resolution of that issue matters

is what the practice is about." (Rouse 2007a: 50).

> poral phenomenon. It amounts to a mutual interactive accountability toward a future that encompasses present circumstances within its past." (Ibid.: 51).

Rouse's underlying understanding of normativity is a very broad one.[6] He conceives normativity in terms of "how we hold one another accountable to what is at issue and at stake in ongoing practices" (Ibid.: 54). Rouse's ideas about a normative conception of social practices are heavily indebted to the philosophy of Robert Brandom. Following Robert Brandom's approach, normativity is located at the level of discursive practices. Discursive practices as actual performances constitute changes of normative statuses – in the sense of social statuses – within the dynamic interactional relations of agents and processes. For Brandom, normativity lies at the heart of our day-to-day interactions, of our engagement in the use of language. His conception, therefore, rests on the assumption that "it's normativity all the way down" (Brandom 1994: 623-639). According to Brandom, the relation between rules or norms on the one hand and discursive practices on the other can only be understood in a pragmatist order of explanation that locates the fundamental grounds of normativity in the actual practices themselves, an order of explanation that develops our understanding of the *meaning* of norms and concepts by an understanding of our *use* of those norms and concepts.

The implicit, process-oriented dimension of normativity, as Rouse describes it, has to be maintained and updated in the actual processes of social interaction through "complex patterns of mutual responsiveness" (Rouse 2007a: 52). Performances respond to one another through acts of correction and repair, through the drawing of inferences, through acts of translation, through feedback loops, through reward or punishment of a performer, by trying to replicate an act in different circumstances, by mimicking it, and so on (Ibid.: 49).

If one adopts this idea of an implicit, process-oriented dimension of normativity, a typology of explicit sources of normativity has to be complemented by a conception of political practices as performative actualizations of implicit norms. A two-dimensional conception of the normativity of practices should address the relation between sources to which agents explicitly refer when justifying their actions or proposed decision options and the implicit normative force that becomes apparent in what they actually do, the norms they observe and perpetuate in their actual engagement in political practices.

Explicit normative resources constitute, in this sense, only one dimension of the normativity of political practices. Agents refer to explicit norms, but at the same time, and in the way they actually do this, they maintain, preserve and renew the normative forces at work at a second level, in the implicit, in-process dimension of normativity. By

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[6] "I have in mind the whole range of phenomena for which it is appropriate to apply normative concepts, such as correct or incorrect, just or unjust, appropriate or inappropriate, right or wrong, and the like." (Rouse 2007a: 48).

referring to sources of explicit normativity – like will, institution, world, reason or transcendence – agents provide options or positions stated or defended in discourse with argumentative backing. But they do not only maintain, preserve and renew these explicit types of normative resources by referring to them in the above-described abstract, 'regulist' way. These agents also maintain, preserve and renew norms that are implicit in their day-to-day political practices and routines by what they actually do. By acting in accordance with these implicit norms that are actualized within a specific context, they provide a second layer of political bindingness.

With regard to the dimension of implicit normativity, democratic legitimacy can only be ascribed to integrative, context-sensitive performances that prevent acts of exclusion. As Iris Marion Young outlines, the model of deliberative democracy, for example, "expresses conditions that often operate as implicit regulative norms guiding social cooperation, but which are never perfectly realized" (Young 2000: 33). Aspects of power and privilege are, first and foremost, always already incorporated in political practices because they originate from more basic structural characteristics of social cooperation. One example Young provides in this context is the norm of articulateness that implicitly determines practices of public communication: Agents who exhibit "such articulate qualities of expression are usually socially privileged. Actual situations of discussion often do not open themselves equally to all ways of making claims and giving reasons" (Ibid.: 38-39). As Young points out, many agents "feel intimidated by the implicit requirements of public speaking; in some situations of discussion and debate, […], many people feel they must apologize for their halting and circuitous speech. While all of us should admire clarity, subtlety, and other excellences of expression, none of us should be excluded or marginalized in situations of political discussion because we fail to express ourselves according to culturally specific norms of tone, grammar, or diction" (Ibid.).[7] This is only one example of implicit norms guiding political practices, which often lead to performances that perpetuate asymmetric structures with respect to race, gender and social status. Therefore, the norms inherent in political practice have to be addressed at a broader level and cannot be reduced to mere compliance with laws or rules. A way of addressing and overcoming the acts of exclusion described in Young's articulateness-example would be to take up a stance of openness to others and to learn something from their different perspective and way of expression (Young 1997: 354; James 2003: 162).[8]

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[7] On this point, see also Conradi (2009: 106).

[8] From a theoretical perspective, approaches based on the model of deliberative democracy should include alternative forms of communication and not restrict deliberation to rational argumentation (Young 2000: 52-80; James 2004: 76-77).

These – admittedly very preliminary – ideas suggest that a comprehensive understanding of political normativity should encompass two dimensions of normativity: an explicit and an implicit dimension. In this conception, the reference to explicit norms is complemented by an implicit dimension that is expressed through "complex patterns of mutual responsiveness" (Ibid.: 52). By picturing political normativity in this way, the reductive conception exhibited by a regulism about norms (Brandom 1994: 20) can be underpinned by a normative base that is located in the performative, embodied dimension of actual political practices. Political practices, processes and agents have to comply with existing rules and regulations in order to meet the demand of democratic legitimacy. Additionally, political practices have to display specific features at the level of explicit as well as at the level of implicit normativity: They have to include explicit references to the will of the people as well as integrative, context-sensitive performances that prevent acts of exclusion.

3.3. Securing Collective Bindingness

In analogy to the findings about practices that establish bindingness, we argue that practices having the function of securing compliance[9] with existing regulations, i.e. practices of securing the binding force of collective decisions, can be interpreted as significant elements of the relational framework of legitimacy.

We define practices that secure the bindingness of collective decisions as a quadripartite sequence of interactions, a conceptual framework we refer to as the A-A-C-S scheme. This framework rests on the assumption that interactions that secure the bindingness of collective decisions consists of a sequence of four significant acts, i.e. of acts of *announcement*, acts of *acceptance*, acts of *compliance* and *sanctioning* acts.

Acts of announcement are acts that communicate the content of a decision to the agents for whom it is binding (not only the agents affected by it). Acts of positive, negative or neutral acceptance are conscious, 'reflected' reactions to the announcement of a binding regulation. Acts of compliance or non-compliance are acts that are performed in accordance with the announced decision. Acts of positive or negative sanctions are acts that are performed as a reaction to a compliance act.

The crucial point with regard to legitimacy can be stated as follows: The reaction to a binding decision doesn't consist merely of compliance or non-compliance (Chayes/ Chayes 1993; Raustiala/Slaughter 2004). It is rather that the act of compliance has to be distinguished from the acceptance-act. These two types of acts may coincide, but they

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[9] While the term *compliance* is used in the context of empirical studies to characterize obedience to rules and laws, normative political theory often refers to the concept of *political obligation* (Simmons 1979; 2001; Klosko 1992; 2001; 2007).

may also move in opposite directions. The term acceptance, on the one hand, designates a reaction or response to a binding regulation, approval or refusal of a decision. The term compliance, on the other hand, is defined in a more narrow sense: It designates the actual adherence or non-adherence to a binding decision. Acceptance and compliance have to be distinguished, since there can be either cases of approval followed by non-adherence or cases of refusal followed by adherence to a decision. Expressions of discontent, therefore, have to be classified as acceptances, while mere adherence to a binding regulation is to be understood as compliance. One may pretend acceptance and disregard a binding decision, but one may also express unwillingness and nevertheless comply with a regulation that is backed by sanctioning power. Legitimacy can only be ascribed if compliance is accompanied by positive acceptance. Mere compliance doesn't provide a decision with legitimacy.

For a decision to count as democratically legitimized, it is required that at the level of implementation, i.e. the level of securing bindingness, there are sufficient opportunities and resources to express approval or refusal. In an institutional sense, only a level of implementation that is open for expressions of acceptance is democratically acceptable. Within the model of legitimation chains, though, the democratic production of bindingness is linked with strictly hierarchical implementation. The securing of bindingness in terms of instruction and command, however, cannot fulfil the demand of democratic legitimacy, since there is no room for the articulation of acceptance. In a practice-theoretical sense, only the presence of practices that allow active expressions of approval and refusal generate the degree of normativity that is necessary for the securing of bindingness.

4. THE LEGITIMACY OF TRANSNATIONAL DEMOCRACY

The expression of acceptance during the implementation process is crucial for the question of democratic legitimacy. This is especially true where legitimation chains are long, as in the case of transnational decision-making. Questions concerning the securing of bindingness have been discussed intensely within the theory of international relations. Under the heading of "enforcement", various ways to strengthen sanction-based enforcement in international law have been debated (Downs/Rocke/Barsoom 1996; Downs 1998). The rationalist compliance-school analyzes incentive systems that may contribute to compliance with norms. The constructivist school focuses on the preference-changing cultural and legitimatory conditions that determine compliance with norms, interpretations of norms and the negotiation of norms (Checkel 1997; Fearon/Wendt 2002). Within both lines of thought in compliance research, the relation between compliance and acceptance hasn't been addressed to the degree necessary with regard to democratic legitimacy. Against the backdrop of a two-level process of securing bind-

ingness of decisions at the global level, though, – compliance of nation states with the regulations of transnational organizations and compliance of citizens with state policies – it is highly problematic to neglect expressions of acceptances. If the enforcement of international regulations manifests itself only in terms of hierarchical directives and instructions that are passed from the nation state to the citizens, there is no room for practices that allow the ascription of legitimacy to a decision made far away from the citizens. Therefore, a democratic deficit and lack of legitimacy may also emerge on the implementation side. Democratic legitimacy presupposes that there is room for expressions of approval and refusal on both levels, i.e., room for non-hierarchical communication. It is not until there is room for practices that express acceptance and dissent, accompanied by possibilities to adapt and modify regulations to fit local or functional particularities, – within the relation between international institutions and nation states on the one hand, within the relation between nation states and their citizens on the other hand – that transnational law-making and regulations can be regarded as democratically legitimate. Democratic legitimacy, thus, can only be achieved if there is also room for acceptance and criticism within the processes of securing collective bindingness.

In the case of the EU, for example, compliance with EU legislation can be analyzed in conjunction with the concept of discretion. Discretion, in this context, "refers to the room for manoeuvre member states are given in the directives they are charged with implementing" (Thomson et al. 2007: 688). If discretionary boundaries are less specified, and thus "wider ranges of policy performances are compatible with the decision outcomes contained in the directives" (Ibid.: 689), the individual member state is granted the opportunity to contribute implementation ideas and specific political practices with respect to a rather abstract decision. This scope of implementation can be interpreted as an element of democratic self-determination that is expressed through the performance of actual political practices.

The relationship between citizens and local authorities can be understood in the same way: If citizens are granted more room to manoeuvre and to articulate and perform their own, specific practices related to an abstract decision, i.e. if political processes are more open to political participation of ordinary citizens and if groups of citizens are "involved actively in the pursuit of a solution to their (individual) problems" (Torenvlied 2000: 14), this can be interpreted as an element of democratic self-determination.

In our view, democratic legitimacy can only emerge at the transnational level if these elements of democratic self-determination in the sense of discretionary room for interpretation, implementation and actual practical performance exist on both levels, i.e., in the case of the EU, between the supranational and the national level and between the national level and the citizens. On both levels, the respective political practices add a

necessary second layer of legitimacy through integrative, context-sensitive performances that prevent acts of exclusion.

5. CONCLUSION

The aim of the paper has been to point out that although the idea of a 'democratic chain of legitimation' is a necessary element for a theory of transnational democracy, it isn't sufficient as a sole source. When it comes to justifying transnational democracy, legitimation chains are rather long and very abstract. In our view, it is necessary to normatively underpin the first layer of legitimacy that is created through a democratic chain by a second, practice-based layer. By introducing a twofold concept of normativity that distinguishes between an explicit and an implicit dimension of normativity, we provided our practice-based concept with a deeper understanding of where to locate the normative forces at play within the political process.

The presented two-layered conception of legitimacy comprises the entire political process, i.e. the production of collectively binding decisions as well as the implementation part, the process of securing collectively binding decisions. At the transnational level, democratic legitimacy can only emerge if the long and abstract legitimation chains are normatively backed by political practices that include explicit references to the will of the people as well as integrative, context-sensitive performances that prevent acts of exclusion.

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