

# Contemporary Challenges to Democracy and the Potential of Participatory Legitimacy

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## *I. Introduction: Are Democracies on the Retreat?*

The theme of today's conference is "Patterns of Legitimacy". It takes as its starting point "patterns" in the plural. This is important, because only such a plural can find answers to the question of the legitimation of democracy or democratic politics in our present day.

When my education in political science began in the 1960s, after the horrors of National Socialism and war, we lived in an atmosphere of hope and expectation that politics worldwide would develop, or at least *could* be developed, for the better, towards liberal democracies, freedom, the rule of law and human rights. This was all the more true after the fall of the Berlin Wall. What was troubling at the time, however, was the triumphalist tone of Fukuyama's "end of history". It was very far from any insight into the abysmal nature of history.

Since then, the trend of more and more states becoming democratic has reversed. Autocracies are on the rise and have overtaken democracies in number. The two are not always clearly distinguishable from one an-

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other either. This is because right-wing extremist cultural, social and political movements are emerging within democracies, under the protection of democratic constitutions, effectively eating away at the indispensable "underlining" of democracy, the so-called political culture, and leaving it riddled with holes. This is particularly dangerous because it happens imperceptibly at first and has long-term causes. Once recognized, these cannot be turned off overnight.

The causes of this transformation are so manifold that I cannot address them here. In general, we must probably recognize that, following Fritz Scharpf's distinction between input and output legitimation, the latter is lacking. Democratic politics is finding it increasingly difficult to identify solutions to the problems at hand that can be realized visibly and quickly enough and that satisfy enough people, i.e., that tend to be just – or at least not blatantly unjust. This is true, among other things, for climate change, for a so-called just transformation, for the fulfillment of the basic tasks of the welfare state and for domestic and transnational security.

Instead, the promise of democracy to provide the (relatively) best political system for all people to live their lives freely and with dignity remains a hollow one for more and more people. This manifests itself, for example in the global North, in lower voter turnout, which in turn leads into a negative circle because the wishes and interests of non-voters systemically count for less. This damages the subjective perception of the legitimacy of democracy, which it cannot do without. In the long run, the natural acceptance of decisions and laws thus dwindles if their content suits one, even though they have come about democratically. The consequences are: increasing violence; social and political instability; islands of anomie; but also the rise of autocratic systems. How can the legitimation of democratic politics be regained, especially in times of globalization?

## *II. Understanding Democracy and Legitimation*

For the following deliberations, I would like to propose at least rudimentary definitions of the core concepts that will be discussed at this conference.

### *1. Democracy and Democratic Politics*

I call democracies those political systems in which every person has an equal right to determine his or her own life and to have a say in his or her

political community. At the beginning of democracies and democratic politics therefore lie the equal right to self-determination, the equal freedom of all people and the equal human dignity decided therein.

As you can see, I believe that defining democracy and democratic politics solely in terms of formal procedures and institutions – elections, majority voting, constitutions, pluralism of parties and associations – is not sufficient without normative implications or "ties". Therefore, even if they are "technically" democratically designed, they all need appropriate "handling" by officials and social actors, so that they do not become perverted into the opposite.

What is needed, therefore, is a **corresponding, normatively profiled political culture**. It must safeguard democratic politics through values such as freedom, justice (fairness), solidarity and an orientation toward truth (which, to be sure, is never entirely attainable). Societies have to come to an understanding about these values again and again, because they are not an obvious basis for concrete decisions. My definition is based on the universalistic values of the Enlightenment. In any case, a mere voting mechanism is not sufficient to define democracy.

In the most powerful democracy in the West, we can observe how any understanding and just political solutions go to the dogs when part of the public refuses to accept the obvious. The fundamental difference here is between the many Republican office holders who verified and recognized the 2020 election results, on the one hand, and Donald Trump with his supporters, on the other, who continue to contradict without submitting to the obligation to substantiate their contradiction. They deny the difference between truth and lies and are quite powerful. Hannah Arendt discussed this problem using the example of Stalinist totalitarianism in her important texts on truth and lies in politics, and she showed that abandoning truth in fact deprives a society of its common ground, and thus also of its democracy.

At the same time, we see from this that destructive lies gain political power not only in Stalinist or autocratic systems, but also in democracies, even if they are institutionally democratic and organized under the rule of law. I will leave aside here the finer differences between the various types of liberal democracy.

## 2. Legitimacy and Legitimation

In its literal sense, legitimation is, first and foremost, a legal category in which the law – *lex* – plays a central, justifying role. In the political system of democracy, the legitimacy of the law depends on whether it has come about under the rule of law and on the basis of popular sovereignty. In terms of political science, however, this is only *one* aspect. For the structure of democratic institutions, it follows that legitimate political decisions, e.g., under the rule of law, must be legally derivable from elections and decisions by citizens. But this derivation does not guarantee that citizens can really experience co-determination, let alone self-determination, in a concrete way. The decision-making processes are already too complex and controversial in a municipality, let alone in a nation-state or even in transnational communities.

Even if the European Council's decisions are formally and legally legitimized via the heads of government, they deal with issues and are taken under conditions that were not up for debate at the time of the election. And these issues are not put up for discussion afterwards either, in accordance with the principle of representative democracy, because the elections for the federal government take place in the national framework and at best marginally address issues of European policy.

This is one example of the complexity of decision-making processes, as a result of which citizens often do not perceive democratic politics as legitimate, not only at domestic level, but even more so at transnational level. The crux of the matter is that legally derivable "objective" legitimacy is not enough for citizens to support a democracy. It must also be subjectively felt and recognized by the people – at least by a clear majority. This brings new aspects into play, e.g., social, economic, but also cultural and psychological aspects, which have an impact on the subjective perception of citizens.

Perhaps the dynamic concept of legitimation offers a bridge from objective to subjective legitimacy. This could happen if citizens can participate in political decisions – even if they only concern a section of democratic politics – in such an effective way that this radiates to their perception of the legitimacy of the system as a whole. I will come back to this. Because so far, that's a dream for the future. At present, we are primarily experiencing a process of progressive delegitimization of democracies and democratic politics.

This is the place to recall a long-established distinction in political science, namely: between consent to the political system as a whole (system

trust), on the one hand, and to individual political decisions, on the other. In democratic political systems, the supreme legitimation of individual self-determination cannot refer to individual decisions, which will always remain controversial in a pluralistic society, but can instead only refer to consent to the political system as a whole. This must be so strong that at least a large majority of citizens can accept being defeated in individual decisions without calling democracy as a whole into question.

The term applied to the realm of the democratic nation-state. System trust arose from the experience and expectation that citizens in this manageable framework would, after defeats in individual cases, nevertheless get their money's worth again in the long run. The question is whether it can be further developed under the conditions of globalization.

We can therefore note that legitimation has an *"objective" legal side* as a necessary, but not sufficient, condition, but it also needs a *"subjective" psychological side*. And it refers to *the political system as a whole*, on the one hand, as a necessary condition for the acceptance of *controversial individual decisions*, on the other. *Legitimizing self-determination* can only refer to the *overall system*. For *individual decisions*, it is a matter of *co-determination* in compromise with other citizens.

### 3. Democratic Politics under Conditions of Globalization

I distinguish between democratic politics and democracy because the term "democracy" is associated with politics within the framework of the nation-state, which is no longer true for many decisions in the age of advanced globalization. These are in part necessarily made transnationally. Legitimacy and legitimation must therefore today be conceived and practically justified beyond the borders of nation-states.

An important part of the delegitimization of democracies stems from the fact that globalization enables business enterprises in particular, which operate transnationally with important social, economic and cultural consequences for the national societies concerned, to evade national regulations. This is one of the reasons for the difficulties states have in meeting their citizens' expectations concerning their ability to solve problems. It is very difficult for national governments to join forces with transnational business because they have to take into account their national constituencies and the lobby groups (including business) behind them, which in turn influence national as well as transnational policy. Companies can also often choose

the legal system under which they operate internationally. In this context, their economic power gives them advantages.

There is a serious asymmetry here that works to the disadvantage of democratic politics. The long-standing goal of US Treasury Secretary Janet Yellen and the former German Finance Minister and current Chancellor Olaf Scholz to introduce a global minimum tax on corporations shows how difficult it is for nation-states and national governments to cooperate transnationally.

It is therefore obviously difficult to conceptualize, in a transparent and convincing way, the objective-legal or institutional legitimacy of democratic politics in a transnational framework, and to practise it accordingly. This applies all the more to the subjective perception of legitimacy. In the following, I would therefore like to concentrate on discussing *opportunities for a subjective perception of the legitimacy of democratic politics under the condition of unclear objective-institutional legitimation chains of transnational politics.*

### *III. Individual Freedom and Social Diversity in Representative Democracy*

How can the promise of liberal democracy to citizens be kept under such conditions, to the effect that the political freedom to which everyone is entitled, the self-determination to which everyone is entitled, which also concerns their common affairs, is not extinguished by politics, but can be democratically realized? Is there any way to legitimize democratic politics, even if there is no uninterrupted personal, territorial and/or material link or even agreement between the individual citizens and the decision-makers?

In political philosophy, primarily European theorists since the 17th century, in particular *John Locke*, *Charles de Montesquieu* and *Jean-Jacques Rousseau*, have tried to provide answers to these questions under the term "social contract". They served to legitimize free political, i.e., democratic or, at that time, often republican rule. Even under the condition of the nation-state (i.e., not yet of globalization), the core question here is how a society that is in itself diverse can arrive at common answers without individual freedom suffering or even being suppressed.

All three authors advocate an orientation of political decisions toward the "common good". *Locke* and *Montesquieu* rely on the fact that the quite legitimate personal and particular interests are negotiated with each other

through compromises in such a way that no one has to give up his or her freedom. According to Montesquieu, mature and experienced politicians should be able to achieve this. Rousseau, on the other hand, radically demands that citizens renounce their particular interests. Instead, they should subordinate themselves to the "common will" ("volonté générale"), which, Rousseau claims, makes them truly free.

Neither of these basic ideas solves the problem that in pluralistic societies – with different interests and power potentials – individual freedom can empirically collide with the common good, all the more so with Rousseau's General Will ("volonté générale"), and that there is no "objective" or compelling standard for how they should be reconciled. How, then, can individual freedom be preserved in social diversity?

In the national framework, the model of representative democracy provides an answer to this. The potential gap between the citizens and the decision-makers, the individual issues and the territorial validity of the decision is theoretically closed here by the concept of representation. This is a notion of whose complexity many citizens are not always aware.

Most people understand this to mean a social correspondence between the citizens and the decision-makers, who are usually chosen by universal, free and secret ballot. A parliament is representative if it adequately "represents" all groups of society. In practice, however, there can be no such correspondence. This is because there is no generally binding division of society into social groups that should be "appropriately" represented in parliament: What percentage of women, men, young people, Catholics, Protestants, Jews, Muslims, city and country dwellers, migrants and "natives," people with different levels of schooling, married and single people, homosexuals, queer people, civil servants, employees and the self-employed should sit in the Bundestag? This list of possible categories mentioned is by no means exhaustive. And what if the composition of society changes?

The answer to this question can only be given pragmatically: If significant social groups, especially underprivileged groups (e.g., women, migrants, the unemployed) are excluded and others are disproportionately well-represented, the chance of a decision that is oriented towards public welfare is small; even if one considers that political interests or priorities can never be unambiguously inferred from social position.

Current efforts to improve the empirical social representativeness of our parliaments in order to strengthen legitimacy are therefore helpful and necessary. But they cannot solve the fundamental problem, especially not under the conditions of globalization, which ultimately increases to an

immense extent the social diversity of those potentially affected and the distance between individual choice and a collectively binding decision.

In the history of democratic theory, the term "representation" contains the further meaning that elected representatives can and should empathize not only with their direct constituents, but also with their socially differently situated compatriots, as indeed with all other citizens in general, and that they should strive, according to their conscience, for a "common good" that does justice to the various citizens affected by a decision.

Representation here does not mean social correspondence, but "realization" of the common good and justice in the conscience of the elected. This is why, according to Article 38 of the Basic Law (*Grundgesetz*), members of the Bundestag are expressly not bound by instructions and are obliged to act only in accordance with their conscience. Values such as the common good and justice thus become central elements of legitimation. Understood in this sense, legitimation is not dependent on an empirical chain of legitimation. Thus, empirical social interests and normative orientations coalesce in "representation" to form a complex understanding of legitimation both through the election and the subsequent legitimation chain, as well as through attention to justice and the common good. This is the theory.

At the beginning of my reflections, however, I pointed out that democratic practice makes more and more people dissatisfied and "eats away" at the legitimation of democracy.

#### *IV. Legitimation through Orientation toward the Common Good and Participation as a Democratic Learning Process*

Does a change in the output legitimation, which is obviously seriously lacking at the moment, offer a perspective to legitimize democratic politics through fairer solutions and to make it more credible again, even under the conditions of globalization, large distances and empirically weak legitimation chains? And how do we arrive at such fairer solutions?

For the "common good" in democracy is not something that simply falls from the sky. It can only result from the arguments and negotiation processes of the citizens. The legitimation of the "common good" must find its way through political freedom as citizen participation, and it cannot be "produced" autocratically or technocratically through a "good" solution.

The goal of political freedom through participation is not only to pursue one's own interests, but also to engage in dialogue with others and to work



toward a just community oriented toward the common good – one with which everyone can identify in principle. This distinguishes the *citoyen* from the *bourgeois*.

Not everyone becomes an altruist in the process. But direct participation in decision-making, which causes us to look beyond our private sphere, inevitably creates the insight that the well-being, cohesion and democratic stability of a community, a city, a region or a country requires skills and values that go beyond the assertion of one's own interests: e.g., putting oneself in the place of others, practising solidarity with them and precisely recognizing democratic political freedom as an equal right for all.

This is associated with a learning process that makes the logics of political action, including the many political disputes, more vivid: the ways and "tricks" that people use when they want to win; the indispensable ability to find support for one's own concerns and to form coalitions; the need to think long-term and to back down sometimes in order to make better progress on another occasion. Those who know this from experience on a small scale also understand "big" politics much better and can overcome the feeling of being overwhelmed by the complexity that alienates many citizens from politics today.

Political experience is important. Someone who is familiar with the political establishment judges differently than someone who has always been concerned only with his or her private well-being, without any broader responsibility. A viable legitimization of democracy only has a chance if a basic understanding and a "resonance" (Hartmut Rosa) can develop between voters and those who are elected, which explicitly includes competent criticism. In communication, one always needs a correspondence between senders and receivers.

We need to ask in what framework such a direct democracy can be implemented within the representative democracy (the latter specifically does *not* see itself as "direct"), enabling the complex practice of political freedom; in the process, it not only brings us the experience of being an effective citizen, but also leads us to rehearsing the values and basic cultural attitudes of successful political practice, acquiring in the process a deeper understanding of democracy and orientation toward the common good. This is necessary for subjectively perceived legitimacy.

## V. Municipal Development Advisory Councils Strengthen the Legitimation of Democratic Politics in Globalization through System Trust

The place that provides such opportunities is the community. This is where the everyday life of citizens takes place; this is where they experience whether services of general interest succeed or fail – housing, work, healthcare, education, leisure activities, culture, infrastructures for energy, mobility, water, etc. Here, it is easy to see whether politicians are looking for solutions or merely looking for their own advancement; but it is also visible and identity-forming when something succeeds.

In line with the 17 Sustainable Development Goals adopted by the United Nations in 2015, squaring the circle of direct democratic participation in representative democracy can succeed if *municipalities* set up "*development advisory councils*". In these, the basic orientation of the entire range of political decisions is on the agenda, which does not require specialists for individual issues. Elected and thus legitimized members of the municipal council, the mayor and the administration work together with non-elected members – business enterprises, citizens and organized civil society – to develop guidelines for the future development of their community.

The exchange of ideas and logics of action between these three stakeholder groups and their justifications leads to more transparency, trust and a convergence towards common goals and the common good. At the same time, democratic participation is significantly expanded.

The result of their joint deliberations must, of course, be legitimized by a final vote of the municipal council. However, there is much to suggest that the joint deliberation on the municipal future will then also suggest the implementation of the result, so that the direct-democratic participation of companies and civil society in a "municipal development advisory council" also becomes effective, even if not legally mandatory. *This is the psychological – not the logical or legal – squaring of the circle.*

Unlike referendums or thematically focused citizen councils or advisory boards, this allows non-elected citizens to participate continuously and effectively in negotiations on the entire field of local politics. The reach can be extended through local public-relations work and rotations, so that not only the "usual suspects" participate.

This improves political solutions (output legitimation), into which many more perspectives have found their way than if only members of parliament, mayors and administrations were making decisions for themselves, often with the help of consulting firms that cannot replace the expertise

of citizens, or under the influence of non-transparent lobby groups. At the same time, such municipal participation strengthens the sense of self-efficacy among many citizens, as well as their understanding of politics. As a result, they identify much more clearly with local democratic politics. Input legitimacy is expanded in many ways and strengthens output legitimacy. But what is a municipality in the context of global politics?

Already after the First World War, but even more so after World War II and with renewed impetus in 1989, far-reaching networks between municipalities and cities emerged across nation-states, but also across continents. Here, cross-border cooperation flourishes, especially with regard to the solution of global issues such as climate protection, scarcity of resources, migration, security in a broad sense and provision of public services. This cooperation does not converge vertically/hierarchically via states, regional associations, up to the UN. Rather, a network of cooperation spreads horizontally, with local nodes often better legitimized locally through elections than national governments. They are motivated by the desire to exchange knowledge and experience, to help each other and to find effective solutions suitable for everyday use.

## *VI. Multi-Stakeholder Dialogues Increase Output Legitimation*

The improvement of output legitimation through the collaboration of actors with very different perspectives and the deliberative exchange of justifications that are as universally applicable as possible (Habermas: generalizable) can be realized not only at municipal level, but also at state or transnational level. So-called multi-stakeholder "dialogues" can serve to reach an understanding about our future challenges. In these, representatives of state politics and administration, business and organized civil society, with the help of science, argumentatively prepare a basic consensus for viable solutions by passing through "antagonistic" conflicts. This strengthens the basic trust in democratic politics (system trust) at all political levels, which is an essential element of subjective legitimation.

At international level, a number of initiatives have already achieved considerable successes in this regard, such as the Extractive Industries Transparency Initiative (EITI) and the Fisheries Transparency Initiative (FiTI), which create transparency in the payments made by international corporations to national governments. In the countries where resources are extracted, this creates the conditions for these countries to have a say in

shaping the extractive sector and determining how the financial proceeds are used.

Municipal democratic participation according to the principle of multi-stakeholder involvement thus not only leads to trust in local democratic politics, but also has a positive impact on how democratic politics is perceived overall: because transparency creates trust, and politics is better understood; and because self-efficacy is experienced, and democracy is therefore perceived as "responsive". Moreover, municipalities are today indispensable places for the realization of global-policy goals such as climate, migration, security and education. This prepares the ground for a more precise level of understanding, and also for the ability to criticize democratic politics (instead of only protesting). Last, but not least, it deprives right-wing extremism of its foundation.

Let us return to the initial distinction between the subjectively perceived legitimacy of the overall political system – for which the consent of *self-determination* is needed – and that of individual decisions – for which **co-determination** is required. The more effectively co-determination is organized at the various levels, in conjunction with more common-good orientation through multi-stakeholder participation, the greater is the increase in consent as self-determination for the overall system of democratic politics. Transnationally, political systems are necessarily different in individual aspects. However, they are all normatively characterized by the rule of law, pluralism and a **combination of self-determination and co-determination** on the part of the citizenry. The more effectively co-determination is organized in the representative political system, and the more it conforms to the system, the more reliably trust in democratic politics will grow at all levels. We therefore also have it in our hands when it comes to transnational politics.

## VII. Conclusion

As I have already pointed out, the conference will deal today and tomorrow with patterns of legitimacy in the plural, with different patterns or forms of legitimation. At its origin, democratic politics must derive legally from acts of citizen self-determination – in the first place, through elections. This is **one** indispensable form of legitimation. However, the path from the election to the individual political decisions is often so complicated and convoluted, especially in times of economic and political globalization, that

citizens can no longer subjectively relate them to the original self-determination.

Moreover, in recent decades, the market-radical paradigm of tending to replace politics with the market has not only lost sight of the people, who no longer felt seen and whose legitimation no longer mattered. The corresponding neoliberal policies drastically increased the inequalities between people's life situations – socially, economically, politically and culturally. This breaks democracy's promise of equality and undermines the subjective perception of its legitimacy.

The proposal to establish "municipal development advisory councils" to expand direct political participation at local level – through which citizens can feel their self-efficacy and experience the democratic process as more comprehensible, and thus transparent – is capable of pushing back the process of delegitimization of democratic politics. When citizens can verify the effectiveness of their participation in their everyday lives and engage in a process of joint decision-making, the principle of democratic politics becomes more vivid and plausible. As a result, people experience a democracy that responds to their needs and that they can help shape. This creates a positive basic attitude in which they can embrace the political system as a whole. They regain confidence in the system – despite or because of the criticism in detail.

Multi-stakeholder participation in the municipal development advisory councils is a major help here. Due to the diversity of perspectives and logics of action, it creates transparency and develops a basic social consensus in preparation for the decision. It brings the business community into political responsibility and leads particular interests to consider opposing points of view in favour of a common-good orientation of politics. This increases the output legitimacy of politics, which is currently lacking in democratic politics, and strengthens trust in the system.

In this way, various "patterns" of legitimation interact: expansion of citizen participation, experience of self-efficacy, increase in transparency, diversity of perspectives and common-good orientation of the output, as well as control of democratic politics in the everyday world.

In this way, output legitimation can be increased, and trust in the system can be won anew, even in times of globalization, across the different levels and formats of representative democracy.

