

Fragile, Contingent, and Nominal: Making Sense of the Rise (and Fall) of Democratic Legitimation in Global Governance

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ABSTRACT: In this paper, I compare and reflect upon the role democratic norms have come to play in the legitimation of global governance institutions. Descriptively, I argue that democratic norms have been on the rise. Yet the dynamics that have given rise to democratic norms as well as the roles these norms have come to play differ significantly across these two realms of global governance. While the democratic narrative has steadily gained centrality in the justification of intergovernmental organizations and their activities, it has initially been strong in transnational governance, as well, but receded to the background in recent years. In the second part of the paper, I draw on contemporary social theorizing to reflect upon the context-sensitive rise (and fall) of a democratic legitimation narrative in global governance. I argue that the rise of democratic legitimation norms we can observe is episodic rather than linear, precarious rather than stable and reformist rather than radical. In normative terms, then, the ‘social order of justification’ to which the norm changes I sketch in this contribution gives rise oscillates somewhat uncomfortably between democratic potential and post-democratic practice.

1 Introduction

In his *Building Global Democracy*, Jan Aart Scholte argues that democratic accountability norms have gained relevance in global governance and that, among other things, some form of consultations with global civil society have become ‘a sine qua non’ for intergovernmental organizations.¹ *The Opening Up of International Organizations* by Jonas Tallberg and colleagues lends further support to the latter argument by providing strong evidence for the assumption that civil society access to intergovernmental organizations, a feature self-declared global democrats tend to hold in particularly high esteem, has expanded significantly after World War II.² Finally, Alex Grigorescu’s *Democratic Intergovernmental Organizations?* reveals that, far from being entirely novel, democratic challenges to intergovernmental organizations have a significant historical tradition that is often neglected. Nevertheless, Grigorescu joins those who argue that such norms have gained strength in recent decades.³

All of this sounds promising: it suggests that global democracy may not only be ‘possible’⁴, but that the global community might, in fact, be moving closer to the normative ideals of global democratic governance. In this paper, I address one important aspect of this alleged approximation of global democratic governance: I examine which role democratic norms and values have come to play in the legitimation of global governance institutions. In doing so, I build on James Rosenau’s insight of a ‘bifurcation of world politics’. According to this view, a ‘state-centric world of world politics’ has increasingly been complemented by a ‘multi-centric world of world politics’ in which a plethora of non-state actors co-ordinate their transboundary interactions.⁵ Taking this insight seriously gives rise to questions about the—factual as well as desirable—linkages between intergovernmental and transnational governance.⁶ At the same time, it also allows for meaningful comparisons of the dynamics,

¹ Scholte 2011.

² Tallberg, Jönsson, Sommerer and Squatrito 2013

³ Grigorescu 2015.

⁴ Koenig-Archibugi 2011.

⁵ Rosenau 1990.

⁶ Abbott, Green and Keohane 2016.

forms and modes of governance that prevail in the two realms—a comparison that will ideally help to throw the contours of each realm into sharper relief.

I begin with a summary of what we know empirically. To this end, I first sketch the increasing centrality of a democratic narrative in the legitimation of intergovernmental organizations, followed by a discussion of the role of democratic legitimacy standards in the emergence and evolution of transnational governance. The summary reveals opposing trends: while democratic standards have steadily gained strength in the justification of intergovernmental organizations and their activities, they have receded somewhat to the background in the evolution of transnational governance.

In section 4, I bring in recent work in social theory to make sense of the developments we observe. The discussion is based on the more general view that the literature on the legitimation of global governance has thus far made relatively sparse use of social theorizing and that, as a result, it confronts difficulties to understand the ‘nature’ of the phenomenon it has set out to investigate. To move in that direction, I draw on the works of Rainer Forst and Colin Crouch. While I use Forst’s work on ‘social orders of justification’ to sketch the normative potential of democratic legitimation in global governance, Crouch’s work on ‘post-democracy’ presents the background for a more skeptical view. Based on the two perspectives, I conclude that the rise of democratic legitimacy norms in global governance is ambiguous: it is more fragile, more contingent, and also less democratic than some of the literature I have cited above tends to assume, and it oscillates between a clear potential for democratization and a post-democratic practice that structurally fails to realize that potential.

2 Legitimizing Intergovernmental Governance

2.1 Patterns of Normative Change

Which role has democratic legitimation come to play in intergovernmental governance? In discussing this question, I primarily build on our forthcoming book *International Organizations under Pressure* in which we examine how the normative

standards international organizations need to fulfill to count as ‘legitimate’ have changed since the 1970s.⁷ To this end, we reconstruct how the sets of norms that underpin contests over the legitimation of intergovernmental organizations have changed in five organizations since the 1970s. Our case studies include the International Atomic Energy Agency (IAEA) as a security organization; the General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) as an economic organization; the International Union for Conservation of Nature (IUCN) as an environmental organization; the UN Refugee Agency (UNHCR) in the field of human rights; and the African Union (AU) and its predecessor, the Organization of African Unity (OAU), as a regional intergovernmental organization. To reconstruct the relevant legitimation contests, we draw on annual reports published by the organizations, member state statements made in the governing bodies of the organizations, publicly visible statements from external actors – i.e., those beyond formal organizational membership – and interviews with (former) staff members and external stakeholders.

So what role do democratic norms play in these organizations? First, we can observe that traditional ‘international society’ norms that emphasise state sovereignty, functional cooperation and non-coercion—but not democracy—remain in place in all five organizations. Second, however, new legitimacy standards are added to the menu. These standards often build on ‘world society’ norms guided by a cosmopolitan ideal grounded in the notion of individuals as rights-holders and aimed at inclusive global governance.⁸ Overall, this addition gives rise to two sets of norms. First, it strengthens *people-based norms*. Second, it adds weight to *procedural legitimacy norms*.

The *rise of people-based norms* is most unequivocal in the IUCN where the conservation of nature for nature’s sake gradually makes way for the idea that nature ought to be conserved for human well-being. This development implies a stronger consideration of the interests of communities living in or nearby protected areas, as well as a greater role for local participation and knowledge in the design and implementation of conservation activities. As a

⁷ Dingwerth, Witt, Lehmann, Reichel and Weise 2019.

⁸ Clark 2007.

result, it significantly strengthens the role of democratic legitimation in the organization. In the GATT and WTO, individuals become a more prominent reference point when labour standards and other ‘non-trade values’ are debated in the early 1990s. In the late 1990s and early 2000s, public protests then tie the legitimacy of the WTO more closely to its respect for the democratic process, to the inclusion of civil society voices in the WTO’s decision-making process, or to the extent to which the WTO makes relevant information about its decision-making available.⁹

Third, we can see the AU explicitly turning ‘the people’ into a primary category of beneficiaries as well as stakeholders. On the one hand, the policy agenda of the OAU and later the AU increasingly turns towards the promotion of ‘human security’, democracy, human rights and the rule of law, with the continental organization asking its members to recognize more fully the interests, desires and rights of ‘the people’. On the other hand, the AU itself establishes the Pan-African Parliament (PAP), formalizes and expands its engagement with civil society and explicitly aspires to become a ‘people-friendly’ and ‘people-oriented’ organization. Like in the other cases we study, the development is not always harmonious. While conventional wisdom suggests that AU member states shield their stakes and only reluctantly support the turn towards ‘the people’, the most vocal critique comes from civil society observers who find the new AU institutions insufficient to live up to the ideals the organization proclaims. Despite all the participatory talk and participatory mechanisms, the critics hold, the organization remains too exclusive, insufficiently transparent and inaccessible to the wider public. As a result, democratic legitimation becomes a central piece of the organization’s legitimation contest.

In other cases, people-based norms also gain centrality, but they are less frequently linked to democratic values. In UNHCR, a rights language dominates. Notions of inclusiveness mainly enter where refugees are increasingly recognized as ‘stakeholders’ whose views and voices need to be included in decision-making. The IAEA, in contrast, highlights how the development component of its work benefits individuals in the organization’s member states.

⁹ For an overview, see also O’Brien et al. 2000 and Strange 2014.

Overall, our study nevertheless supports the idea that, to count as legitimate, today's intergovernmental organizations need to demonstrate not only what they do for their member states, but also what they do for—and how they involve—the citizens of those states.

While this new expansion of the legitimation menu renders a democratic legitimation narrative more attractive, the latter is also supported by a complementary shift in which *procedural legitimacy standards* gain currency. In brief, this second norm change implies that the audiences of intergovernmental organizations increasingly care not only about what the organization accomplishes, but also about how it is governed. Again, some of the new procedural standards add weight to the democratic legitimation narrative. In the WTO, for example, the organization's response to the Seattle protests emphasize the consensus principle, civil society participation and transparency and hence point to the procedural standards that are closely tied to the democratic legitimation narrative.

In the OAU and the AU, the strengthening of procedural norms equally comes in the form of democratic principles. Initially referring to democracy promotion as a substantive concern, democratic standards are quickly applied to the international organization as well. As in the WTO case, the introduction of this new legitimacy standard itself is not questioned openly. Instead, contestation in the OAU/AU case focuses on whether the measures the organization takes go far enough to live up to the promise of being a 'democratic' organization. At the same time, procedural norms also rise in response to the OAU/AU's substantive aspirations. As the organization becomes more and more concerned to prove its effectiveness 'on the ground', new standards to measure efficient policy-planning, organizational coherence, and sound financial management become important benchmarks to evaluate the OAU/AU.

In the IUCN, human well-being norms equally give rise to procedural standards. While IUCN's bi-cameral structure has traditionally given governmental and non-governmental actors an equal say in the governance of the organization and in its programmatic decisions, the newly gained focus on conserving nature for the people's sake translates into demands for including 'the people' as well as their knowledge in the decision-making about conservation measures. In response to these demands, concepts like 'inclusiveness' or 'local knowledge'—

often including indigenous knowledge—become more central in IUCN’s communications, and the organization also pays attention to corresponding procedures in its practices. The discursive change also has consequences for the way in which the organization’s identity construction: notably, it deepens and diversifies the way in which IUCN conceives and presents itself as a democratic conservation forum on the one hand, and as an inclusive expert and knowledge hub on conservation issues on the other.

In sum, procedural standards evaluate international organizations based on how they work rather than based on what they achieve. Like people-based legitimacy standards, the challenges they formulate can be answered in various ways. While answering the demands of people-based and procedural legitimation norms thus remains possible without reference to democratic values, democratic legitimation frames stand out as the only ones that respond to both secular trends simultaneously.

Finally, the view that democratic norms are on the rise is also confirmed in a complementary study in which we examine how 20 international organizations have made use of a democratic rhetoric in their annual reports between 1980 and 2011.¹⁰ While the democratic language of ‘inclusiveness’, ‘participation’, ‘transparency’ or ‘accountability’ was virtually absent in the 1980s, it increased to about one in nine legitimacy statements in the 2000s. Moreover, the share of organizations that made use of democratic legitimation in an annual report rose from 13 per cent in the 1980s to 33 per cent in the 1990s and 53 per cent since 2000. Finally, virtually all organization years in which democratic rhetoric was equal to or exceeded one in three legitimacy claims occurred in the latter half of our period of investigation. Examples of a democratic rhetoric include the IMF’s claim that it ‘has made notable strides in its own transparency, publishing an unprecedented amount of information on its member countries’ policies and IMF-supported reform programs and on its own operations and financial position’¹¹, or the OECD’s stated ambition ‘to include more stakeholders and more countries’ and ‘involve the public in deliberating the difficult policy

¹⁰ Dingwerth, Schmidtke and Weise 2018.

¹¹ IMF 2000, ii.

choices that almost every modern issue entails'¹² in order to 'become an open and inclusive policy-sharing organization'.¹³

2.2 Pathways of Normative Change

How have democratic standards been able to gain strength in the legitimization of intergovernmental organizations? As the WTO case demonstrates, the politicization of intergovernmental organizations that follows in the wake of an expansion of international authority is a driver of democratic legitimization in some cases.¹⁴ At the same time, we observe that the politicization of international authority is neither a sufficient, nor a necessary condition for intergovernmental organizations to strengthen the role of democratic legitimization. The IAEA case thus suggests that even if they are followed by a politicization, authority gains do not always generate a stronger momentum for democratic legitimization. In contrast, the IUCN case shows that democratic legitimization may well become more central in the absence of significant authority gains.

While politicization matters in some cases, our case studies thus reveal three further pathways of normative change. The first refers to the emergence of *new audiences* beyond member states. As international organizations seek legitimacy from non-traditional audiences, their repertoire of legitimization often adapts to the normative expectations or demands of those audiences.¹⁵ These audiences can be the media (as in the IAEA case), donors (as in the UNHCR or the AU) or the broader public (as in the WTO). Depending on the precise configuration and expectation of these 'second audiences' from which an international organization seeks legitimacy, democratic legitimization will be more or less central.

A second and related mechanism hints at *bureaucratic politics*. It suggests that international bureaucracies can face incentives to create or strengthen their own 'second audiences' to gain autonomy from member states. The AU is a case in point: equipped with

¹² OECD 2000, 7.

¹³ OECD 2011, 10.

¹⁴ Cf. O'Brien et al. 2000; Zürn, Binder and Ecker-Ehrhardt 2012.

¹⁵ See also Symons 2011; Zaum 2013.

little autonomy, the AU Commission pushed the idea of a ‘People’s Union’ in which it is accountable not only to the governments of AU member states, but also—and ultimately—to the African people. Finally, a third mechanism refers to the self-reinforcing dynamic that sets in after and then serves to deepen an initial norm shift. The IUCN case exemplifies this logic of *normative path dependence*: the shift from conserving nature for nature’s sake to conserving nature for human well-being was not intended to strengthen participatory norms, but it indirectly led to this effect when, unlike nature, ‘the people’ whose well-being the organization claimed to serve demanded a say.

Taken together, the pathways we identify suggest a high level of contingency. Democratic normative pressures have been on the rise for a variety of reasons, but these reasons—whether we think of social protests or the democratization of member states—may not themselves be a very stable presence. Moreover, while many driving forces we identify render democratic legitimation a *plausible* response, few of them inevitably suggest democratic legitimation as a *unique* response. Overall, we can therefore conclude that, even though democratic norms have gained relevance in the legitimation of intergovernmental organizations in the past, there is no guarantee that they will gain further strength in the future.

3 Legitimizing Transnational Governance

How does transnational governance compare to this picture? How does legitimation work in this second world of world politics? To examine this question, I look at what has been dubbed a ‘Cambrian explosion’¹⁶ of transnational governance initiatives in the field of sustainability regulation. Some of the governance organizations we find here standardize crosscutting issues like environmental reporting, environmental management systems or social accountability. Others address individual natural resources: the Forest Stewardship Council (FSC) and its competitors thus define what counts as sustainable wood. The Marine Stewardship Council (MSC) provides the same service for wild-catch fish, Bonsucro for

¹⁶ Abbott 2012.

sustainable sugarcane, and the Roundtable for Sustainable Palm Oil (RSPO), the Roundtable for Responsible Soy (RTRS) and many others for additional commodities. Add a number of standards on greenhouse gas accounting, offsetting and management, on fair trade, on mining or on corporate conduct in the textiles industry and you will still only get an idea of the breadth, depth and diversity in contemporary transnational regulation.

So what role do democratic norms play in the legitimation of transnational standard schemes in this issue area? In short, I argue that it is useful to distinguish between an early period in which transnational sustainability governance emerged and democratic legitimation was central, and a more recent phase in which transnational governance had largely become normalized as a form of governance, thereby reducing the pressures for democratic legitimation.¹⁷

3.1 The Baseline: Democracy as a Central Pillar of Legitimation

When transnational governance schemes like the Forest Stewardship Council (FSC) emerged as new modes or tools of global governance, their claim to legitimacy rested on three pillars. Their first and foremost claim was that they responded to important ‘governance gaps’. Because governments failed to agree on a global forest convention and boycotts of tropical wood could not hinder deforestation either, for example, environmental activists promoted sustainability certification as a viable second best.¹⁸

In most cases, however, the actual contribution to problem solving remained modest. In absolute terms, the FSC could not halt deforestation, nor was the GRI able to render the business sector environment-friendly and socially responsible. As a result, *continued progress* became a catch phrase for the legitimation of transnational governance initiatives. It required the governance organizations to demonstrate that they were able to expand their reach ever

¹⁷ This section draws on Dingwerth 2017.

¹⁸ Cashore 2002.

further once they had harvested the proverbial low-hanging fruit. As a result, the ability to get 'beyond the 10 per cent' of world market shares figured prominently in their communications.

Second, *legal certainty* constituted another legitimation resource for those governance initiatives that offered certification of compliance with their standards. To be credible on the market, they had to show that firms holding a certificate lived up to the rules laid down by a transnational governance scheme while those who were denied a certificate had to be able to know why. In most cases, this need resulted in a strong institutionalization and legalization of transnational governance schemes.¹⁹ As this institutionalization affected decision-making as well as implementation, full-fledged 'private regimes'²⁰ modelled on the form and function of other legal regimes emerged over time.

Third, the legislative function transnational governance schemes had come to adopt raised the question of authorization. Who, in fact, had mandated them to 'regulate for the rest of us'?²¹ This question turned references to *democratic norms and values* into a core pillar of their legitimation. In short, those representing the schemes argued that their organizations were designed to maximize the inclusion of affected 'stakeholder groups', the transparency of the decision-making process and the possibility for mutual learning in deliberative forums. To lend credibility to such claims, many organizations formally or informally divided seats in executive boards along the lines of pre-defined stakeholder groups, established consultative stakeholder forums and allowed for public comments periods when proposing new or amending existing regulations (Bernstein and Cashore 2007; Dingwerth 2007; Dingwerth and Pattberg 2009).

3.2 From Basic to Distinctive Legitimacy: Change over Time

In contrast to intergovernmental governance, however, democratic legitimation the function of democratic legitimation has shifted in recent years. Once a key ingredient of *basic*

¹⁹ Brown, de Jong and Lessidrenska 2009.

²⁰ Haufier 1993.

²¹ Lipschutz and Fogel 2002.

legitimacy, democratic legitimacy has largely become an element of best practice that provides *distinctive* legitimacy. With this shift in function, the democratic narrative has hardly become irrelevant, but it has arguably lost centrality in the legitimation of transnational sustainability governance. The driving forces that lie beneath the shift are two-fold. First, transnational governance has become a ‘normal’ element of global governance and thus requires less justification *per se*. Second, many new initiatives were able to define their objectives in terms of internationally agreed goals, thereby further reducing the need to defend their democratic credentials.

Gaining vs. maintaining legitimacy. In the social worlds we inhabit, deviations from the norm—from what is considered as ‘normal’—raise interest as well as suspicion. This is no different for novel organizational forms. When the FSC was founded in 1993, it therefore confronted a ‘liability of newness’.²² It was a civil society organization, but it neither sought to raise awareness, nor to lobby for new intergovernmental norms, nor to monitor the compliance with existing rules. Instead, it created new rules. This function made it resemble an international organization; yet its members were individuals and associations, not states. So, what exactly was the FSC? And which standards should organizations like the FSC follow to gain legitimacy?

Copying standard features of international institutions—whose absence or failure was often the *raison d’être* for transnational governance organizations—was one part of the solution. The FSC thus defined membership rules and categories, designated the general assembly of members as the highest decision-making body and designed the *Principles and Criteria* on which certification in ways that resembled an international legal document. In addition, the *democratic* quality of the decision-making process featured prominently. Like international standardization bodies, the legitimacy narrative suggested, the FSC held actors to account by monitoring their compliance with environmental performance standards. Unlike conventional international organizations, however, everyone who shared an interest in the issues that were at stake, could become a member and take part in the making of those

²² Freeman, Carroll and Hannan 1983.

standards. Ultimately, transnational governance initiatives thus portrayed themselves not only as more efficient and more effective, but also as the more democratic cousins of intergovernmental regulators.

As more and more standard-setters followed the FSC template, a standard model evolved over time.²³ With the establishment of the ISEAL Alliance as an umbrella organization of transnational standard-setters in 2002 and the Alliance's adoption of the *Code of Good Practice for Setting Social and Environmental Standards* in 2004, this standard model was eventually codified. It included numerous criteria that, by focusing on participation and inclusiveness, by demanding transparency or by seeking to guarantee a high quality of deliberations, were closely tied to the ideal of democratic decision-making.

Yet, the adoption of the *Code of Good Practice for Setting Social and Environmental Standards* also marks an important change in the function the democratic legitimization narrative came to play as the organizational field matured. While democratic legitimacy claims had initially served to establish legitimacy for a new type of organization, their function increasingly shifted to *distinction* between the more and the less 'credible' actors in the field. The organizations that originally made up the field thus no longer used the *Code of Good Practice* to claim that transnational standard systems could be legitimate in the first place. Instead, they used it to demonstrate compliance with the conception of 'international standards' as defined in the WTO Agreement on Technical Barriers to Trade (TBT) and to draw a boundary between ISEAL members and a host of other regulatory initiatives which did not (yet) deserve the same level of 'credibility'. As the ISEAL Alliance expanded from eight members to 22 full members, it also added two further instruments of distinction—the *Impacts Code* in 2010 and the *Assurance Code* in 2012—with which all ISEAL members need to comply.

Overall, this diversification indicates that democratic legitimacy remains relevant, but that its role changed from providing *basic legitimacy* to generating *distinctive legitimacy*. This development occurred in a context in which key audiences had become increasingly familiar with transnational governance as a new form of regulation. As the liability of newness

²³ Bernstein and Cashore 2008; Dingwerth and Pattberg 2009; Etzion and Ferraro 2010.

diminished, as private transnational governance organizations came to be recognized as a ‘normal’ pillar of global governance, and as their ‘right to rule’ was no longer fundamentally challenged, the democratic claim lost centrality. As a result, second generation initiatives like Bonsucro, the Roundtable for Sustainable Palm Oil (RSPO) or the Roundtable for Responsible Soy (RTRS) continue to acknowledge ‘democratic’ legitimation criteria in their communications. But they put much less emphasis on such criteria than first generation initiatives like the FSC.

For example, organizations like the RSPO or RTRS focus primarily on the growth rates of their certification programmes or respond to challenges to the credibility of the environmental claims of certificate-holders by NGOs.²⁴ Moreover, when commenting on the inclusiveness of their multi-stakeholder approaches, organizations like the Better Cotton Initiative (BCI) or Bonsucro state that they ‘work with a diverse range of stakeholders across the (...) supply chain’²⁵ or build ‘a platform to accelerate change’.²⁶ This contrasts starkly with the FSC’s stated ambition ‘to make sure no one viewpoint dominates the others, our membership has three chambers—*environmental, social and economic*—that have equal rights in decision-making’ (FSC, 2016, emphasis in the original).

Embeddedness in international regulation. In addition, a change in the more general outlook of transnational governance initiatives made a difference. Whereas first generation initiatives mainly sought to devise regulations in fields where intergovernmental rules were absent, many recent initiatives are intertwined with existing international regimes. As they derive their overarching goals from international agreements, they are less susceptible to the charge of ‘regulating for the rest of us’. Because their basic legitimacy is tied to the legitimacy of the ‘parent agreement’ to which they seek to contribute, their need to draw on democratic legitimation is lessened. Transnational climate initiatives are the prime example in this regard. As Jessica Green has shown, transnational governance has grown faster in this sector than in

²⁴ Nikoloyuk, Burns and de Man 2010, 68-69; Schouten and Glasbergen 2011; Schouten, Leroy and Glasbergen 2012.

²⁵ Better Cotton Initiative 2016.

²⁶ Bonsucro 2016.

any other.²⁷ Importantly, however, it also includes the lowest share of ‘de novo’ regulations. Most transnational climate governance initiatives thus ‘appropriate some aspects’ of existing regulations. They seek to contribute to the broader goals set in the United Nations Framework Convention on Climate Change (UNFCCC), in the Kyoto Protocol or, more recently, the Paris Agreement.

In sum, we can therefore complement the *field recognition argument* with a *state prerogative argument*. In short, this argument holds that, where (inter-)state regulation is in place, private regulation primarily legitimates itself in relation to the goals, principles and instruments of public regulation; as a result, democratic legitimation norms become less central. In contrast, where (inter-)state regulation is absent, the right to regulate needs to be claimed and defended. As a result, democratic legitimation norms become central.²⁸

4 Making Sense of Democratic Legitimation

So far, I have provided two broad sketches of the role democratic legitimation has come to play in the two major realms of global governance. In the legitimation of intergovernmental organizations, I have argued, democratic values were initially marginal but have steadily gained centrality since the 1990s. In transnational governance, their trajectory appears to be different. Democratic values they were a central pillar of legitimation efforts when private transnational regulation emerged as a new form of global governance in the 1990s, but they have receded to the background since those days.

How are we to interpret what we see? In the following, I offer some starting points for reflecting more thoroughly about the phenomenon at hand. Such a reflection, I would argue, should precede—or at least go hand in hand with—the examination of the ‘correlates’ of the phenomenon to which contemporary social science tends to rush all too quickly. This seems to me to go beyond the distinction between *explaining* and *understanding* in relation to which

²⁷ Green 2014, 89–95; see also Bulkeley et al. 2014.

²⁸ For a similar argument at the domestic level, see also Balleisen 2017.

social scientist often simply identify with one or the other tradition. Instead, it refers to the ability to make sense of the social world in a more general way: if we do not understand what it is we wish to explain—what the ‘nature’ of something is or what that something ‘is a case of’—then an explanation that tells us this or that factor have caused ‘it’ is likely to be of limited use. In this spirit, I offer three initial lines of thought that might help us to grasp the phenomenon. While the first line of thought remains more descriptive, the second and third examine the potential of the rise (and fall) of democratic legitimation in global governance from a more normative angle. They do so by zeroing in on the democratic potential and post-democratic risks associated with that rise.

4.1 Episodic, Not Linear

A first inroad for making sense of democratic legitimation in global governance as we see it remains at a more descriptive level. From what I have outlined above, we can conclude that democratic legitimation has become one important normative yardstick for governance beyond the state.²⁹ At the same time, and in contrast to some other interpretations, the emergence of democratic norms in global governance is episodic, not linear.³⁰ By and large, we see that democratic norms begin to matter in both realms of global governance in the 1990s. In each individual case, however, the successful introduction of democratic norms into an organization’s legitimation discourse responds to the specific legitimation needs defined by the historical context and the field-specific social conditions at that time.

In transnational sustainability governance, the FSC’s role as a first mover strongly shaped what a ‘legitimate’ global governance institutions in the field would have to look like; yet its affirmation of democratic governance principles as much from functional needs as from the political persuasions of its founding members. Moreover, the WTO’s TBT Agreement came to provide an important context when it required international standards to be the products of inclusive and transparent decision-making processes.

²⁹ See also Nullmeier et al. 2010; Scholte 2011.

³⁰ For contrasting views, see Drori, Meyer and Hwang 2006 and Steffek 2003.

In intergovernmental governance, our broader study hints that democratic members, a large share of very poor members, and social protests render the adoption of a strong democratic rhetoric more likely. Our case studies additionally reveal that international bureaucracies may develop an interest in promoting democratic values to build new constituencies that allow bureaucratic actors to expand their autonomy vis-à-vis governments. Furthermore, notions of transparency and accountability tend to gain relevance when new types of donors contribute significant shares to an organization's budget. Finally, issue-specific legitimization cultures matter. In the IAEA case, democratic legitimization is thus virtually absent despite a politicization of the organization's authority; in IUCN, it is present from the very beginning and gains further strength as the membership becomes more diverse and as the introduction of human well-being as a fundamental rationale creates path dependencies in support of democratic norms.

Taken together, these examples provide evidence of the multiple contextual conditions that give rise to democratic legitimization norms. This multiplicity confirms Steven Bernstein's argument that 'there is no abstract mix of procedural, substantive, or performance criteria that can be known to produce legitimacy outside the context of particular political communities'.³¹ In addition, it suggests that the rise of democratic norms is not steady, but occurs in episodes of normative change instead.³² Finally, our discussion of transnational governance illustrates that democratic norms do not need to remain central once they are successfully introduced into a legitimization discourse.

Taken together, our observations thus suggest a much stronger contingency and fragility than the global democracy/democratization discourse tends to suggest. Against this backdrop, the idea of a more or less linear rise of democratic principles of global governance appears somewhat naïve.

³¹ Bernstein 2011, 28.

³² See also Grigoresu 2015.

4.2 The Skeptical View: Nominal Democratic Legitimation as Post-Democracy

Beyond description, the observation that democratic legitimation norms are on the rise in global governance while they experience a crisis in contemporary democracies might be a first reason to pause and reflect. How does the strengthening of democratic norms in the legitimation of intergovernmental organizations square with the rise of authoritarianism, populism and ‘illiberal democracies’ in Western as well as non-Western domestic contexts? That democracy becomes a more attractive standard in intergovernmental governance seems puzzling, moreover, if one accepts Colin Crouch’s diagnosis that nominally democratic societies are increasingly ‘moving towards the post-democratic pole’ of the continuum from democracy to post-democracy. At that pole, Crouch argues, elections are still held to determine the government. Yet ‘public electoral debate is a tightly controlled spectacle’; citizens play ‘a passive, quiescent, even apathetic part, responding only to the signals given them’; and ‘politics is really shaped in private by interaction between elected governments and elites that overwhelmingly represent business interests’. As a result, many hopes associated with the democratic project—Crouch mentions strong egalitarian policies and efforts to restrain powerful interests—are facing a hard time.³³

To solve the puzzle, we could contest Crouch’s diagnosis in the first place. Alternatively, we could accept it and resolve the contradiction between international and domestic trends by pointing to the flattening of the curve of the rise of democratic legitimation in global governance in recent years. Maybe, then, democratic legitimation in global governance as a whole was merely an episode that originated in the ‘end of history’ euphoria of the early 1990s but that will eventually evaporate into thin air without leaving much of a trace. The WTO—as well as other international economic organizations—responded to the social protests in the 1990s by adopting a rhetoric in which values and norms espoused by civil society were central. But it gradually reduced its reliance on such norms and values once protests weakened and

³³ Crouch 2004, 2-4.

attention shifted back to more traditional terrains. Similarly, transnational sustainability governance schemes may have needed democratic legitimation to gain initial recognition. But once such recognition has been forthcoming for the organizational field as a whole, the need declined and new entrants to the field stressed their democratic credentials to a much lesser extent than the founding institutions.

While this is a plausible reading, two further interpretations are also compatible with a post-democratic diagnosis. On the one hand, the rise of transnational governance itself, as a form of a privatization of global rule-making, fits with the broader narrative of a political system that ‘increasingly cedes power to business lobbies’.³⁴ As private regulators take over public functions, we can expect them to—at least ceremonially—embrace ‘public’ norms that traditionally apply to rule-making organizations. While public rule-makers are increasingly evaluated in terms of private businesses, it therefore should not come as a surprise that private regulators are subjected to scrutiny in relation to public norms.³⁵

Second, the observation that those in power have adopted the democratic legitimation discourse without having to change much in terms of the practice of decision-making may also explain some of the ‘boredom, frustration and disillusion’ that have contributed to the end of protests based on a democracy frame.³⁶ The lack of continued normative pressures to democratize, Crouch argues, is to be expected after a ‘democratic moment’. Yet like with other originally transformative concepts like ‘sustainability’, the successful re-definition of ‘democracy’ by those challenged as suffering from a ‘democratic deficit’ can be expected to facilitate disillusion and hence disengagement among activists. As ‘powerful elites have learned to manage and manipulate popular demands’³⁷, normative pressures are reduced. What results is a ‘trivialization of democracy’ in which ‘the forms of democracy remain fully in place’, but ‘politics and government are increasingly slipping back into the control of privileged elites’.³⁸

³⁴ Crouch 2004, 4.

³⁵ Dingwerth and Hanrieder 2010.

³⁶ Crouch 2004, 19.

³⁷ Ibid.

³⁸ Ibid., 6.

Crouch's diagnosis is geared to democracy at the domestic level. At the international level, however, the virtually exclusive focus of 'democratic' proposals on formal institutional reform would seem to confirm the suspicion to which Crouch's argument gives expression. By neglecting all informal sources of exclusion from global decision-making—from literacy rates to access to healthcare and basic social security—it ignores the inconvenient truth that formal transparency and formal access alone will inevitably render global governance more democratic only for some people.³⁹ A focus on 'nominal democracy'⁴⁰—a democracy that is democratic only by name—in other words, would equally lend support to the idea that the rise of democratic legitimation is 'post-democratic' in important ways.

4.3 The Optimistic View: Noumenal Power and the Potential for Moral Progress

All this begs the question whether the changes we observe—a rise of democratic legitimation norms that is episodic rather than linear, contingent rather than stable and reformist rather than radical—constitutes progress in normative terms. The critical remarks in the previous paragraphs seem to suggest they do not, but a closer look is warranted.

A deeper normative reflection on the rise of democratic legitimation norms in global governance could thus make use of Rainer Forst's work on 'social orders of justification' (*soziale Rechtfertigungsordnungen*). Forst is interested in social critique as it is practiced: in what constitute, in a given social order, 'socially effective justifications'.⁴¹ Adopting a focus on the 'power of justifications' rather than on the 'justification of power', Forst holds that power is rooted in accepted justifications—that it takes, as he calls it, a primarily 'noumenal' form. To have power then means to be able 'to influence, make use of, define occupy or even seclude' the realm of accepted justifications for others.⁴²

³⁹ Dingwerth 2014.

⁴⁰ Keohane 2015.

⁴¹ Forst 2015, 56.

⁴² Forst 2015, 60-66; translations are my own.

Accordingly, the rise and fall of democratic legitimation in global governance matters because it implies that the terrain on which the legitimacy of global governance organizations is contested shifts towards 'democracy'. Some actors will inevitably wield a higher credibility on that particular terrain; they will benefit from this shift. In contrast, those with a lower standing in relation to the task of defining 'democracy' stand to lose. Stated differently, the ability to define the conceptual terrain on which legitimacy is negotiated in the first place is, and always has been, an important *general* source of power. The basis of the empirical evidence presented in this paper suggests that the ability to define the terms of 'democracy' has become a *specific* form of power in at least some areas of contemporary global governance.

However, Forst does not stop at the sociological analysis of social practices. He also has a normative interest in 'well-reasoned justifications'. In the spirit of critical theory, he aims to identify what inhibits existing 'social orders of justification' from realizing more fully a social order of justification that, from a normative point of view, could be defended based on good reasons. This normative position allows him to not only state that 'power is rooted in accepted justifications', but to also qualify such accepted justifications as 'sometimes good, sometimes bad, and often somewhere in between' and to identify critique with the question 'whether the dominant language is actually the right one'.⁴³ Social protests raise precisely this question when they seek to either complement or replace the language of functionality with the language of democracy.

Substantively, Forst associates normative progress with the idea 'that a society strives for new levels of justification according to which political and social conditions can not only be justified in reciprocal and general ways, but where there also exist institutions for generating such justifications'.⁴⁴ To what extent the developments sketched in sections 2 and 3 of this paper meet this ambition is a big question. In principle, the democratic legitimation narrative holds a strong potential for normative progress in the sense identified by Forst simply because, more than other legitimation narratives that matter in world politics, it is built around a

⁴³ The original quote reads: 'Macht beruht auf akzeptierten Rechtfertigungen – manche gut, manche schlecht, viele irgendwo dazwischen' (Forst 2015, 65).

⁴⁴ Ibid., 109.

political idea that takes the ‘right to justification’ seriously. In that sense, democracy *should* clearly be at the core of the legitimization discourses related to global governance institutions; and from that particular angle, the observation that democratic standards have indeed entered public discourse about the legitimacy of global governance institutions must seem promising.

In practice, however, there are major challenges: the episodic nature of the rise of democratic legitimation, the many ways in which the specific conceptualizations of democratic governance offered by global governance institutions fall short of embodying a ‘right to justification’, or the gap between democratic rhetoric and the ‘institutions for generating justifications’ that meet a certain normative ambition. Looking at these shortcomings, it seems fair to say that the rise (and fall) of democratic legitimation narratives in global governance oscillate somewhat uncomfortably between democratic potential on the one hand and post-democratic practice on the other. The democratic potential lies in the fact that the mere presence of democracy talk can open the door for normative progress. The ideological potential lies in the fact that the powerful may employ democracy talk to silence opposition, disguise the true contours of their power or make the exercise of their power—in which the few represent the many—appear to be in the name or interest of ‘the public’.

5 Conclusion

In this contribution, I have sketched the pattern of a growing role for democratic legitimation in one ‘world of world politics’—intergovernmental governance—combined with the initial strength but subsequent decline of the same legitimation narrative in the other ‘world of world politics’—transnational governance. What does this pattern amount to? The reflections I have added based on the works of Colin Crouch and Rainer Forst suggest that what we see when we look at these broader trends in conjunction is *a* non-linear, episodic transformation of a specific social order of justification—namely the justificatory order that applies to global governance institutions—that, from a normative point of view, oscillates between democratic potential and post-democratic threat.

Taking a broader look, this observation has two main implications. With regard to the objective of enabling a reflexive discussion within the community of scholars, positivists share a distaste for what they call ‘arguing by example’. Because we can find examples for almost everything, they prove almost nothing. To substantiate claims about the pervasiveness of a democratic legitimization narrative in global governance, the studies I have summarized in the first part thus provide a more systematic overview. At the same time, I could easily plead guilty for being selective in a different way, namely in relation to the theoretical perspectives on which I draw to make sense of the rise (and fall) of democratic legitimization in these fields. I could defend my choice by claiming that the work Forst allows me to see the ‘social orders of justifications’ I have sketched above while the work of Crouch allows me to make sense of the particular order of ‘democratic’ justification that is emerging. Yet my ambition is more modest in the sense that I hope to show that we can learn *something* from bringing social theory —of whatever sort or color—into the study of global governance and its legitimization. That something, in my view, is the ability to take a few steps back and ask what we are actually seeing when we are looking at ‘legitimation’.

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