



The Dynamics of Legitimation
*Why the study of political legitimacy
needs more realism*

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Abstract

The paper suggests a practice turn in the analysis of political legitimacy. Current social science research on political legitimacy suffers twofold. First, it shows an undue (silent) impact of an ethics-first perspective. Second, empirical approaches to political legitimacy mostly focus on societal constellations of citizens' beliefs. The dynamic character of political legitimacy as a concept referring to an ongoing societal practice of legitimation is missed. Understanding legitimacy in terms of legitimation practice suggests a broadened research agenda that a) reserves a greater role to hermeneutical approaches and that b) acknowledges the systematic relation of political theory, the sociology of knowledge and the history of ideas in that matter.

Keywords

Legitimacy — Political Science — Political Theory

I. Introduction

Recently, Raymond Geuss (2008) has argued for more realism in political theory. He is concerned about the analysis of politics from what he calls an 'ethics-first' perspective or 'ideal theory'. According to the ethics-first perspective 'one can complete the work of ethics first, attaining an ideal theory of how we should act, and then in a second step, one can apply that ideal theory to the action of political agents' (Geuss 2008: 8). Contrary to that, Geuss supports a view which might be called 'realist political theory'.¹ The main difference to the ethics-first perspective concerns where to start in the study of politics. Political theory² should not start from and be concerned with how political agents ought ideally act or value, 'but, rather, with the way the social, economic, political, etc. institutions actually operate in some society at some given time, and what really does move human beings to act in certain circumstances' (Geuss 2008: 9). In this paper I want to suggest a more realist view in the study of political legitimacy. However, my argument does not address some ethics-first perspective in political theory. It rather concerns the interface between political theory and empirical political science. In my view, the study of political legitimacy should be more prudent in the adoption of two views of political theory. First, it is sometimes (unwittingly) driven by an ethics-first perspective. Second, it frequently refers legitimacy to individuals' beliefs about the rightness of political order. Both views have shortcomings regarding a proper account of political legitimacy which should analyse societal practice of legitimation as a dynamic process, or so I will argue.

To illustrate that, I draw on the role of the distinction between input- and output-oriented legitimacy in studies of the EU's legitimacy. However, the scope of my argument is not restricted to the use of the input-output distinction, but refers to a more general tendency in legitimacy research. The reason I choose this example anyway is that the input-output distinction is seen as a promising way to 'operationalise' political legitimacy and thus serves well to illustrate my point. This paper mainly presents a conceptual analysis of legitimacy. Firstly, I argue that an empirical turn in the study of political legitimacy is needed. I review the difference between normative-practical and empirical-analytical legitimacy statements and the different function they fulfil. This allows for a better understanding, so I hope, in what sense EU's

¹ Geuss is not the only advocate of more realism in political theory. Bernard Williams has argued in the same direction (Sleat 2010). See Galston (2010) for an overview of realism in political theory. This view is not related to realism in international relations theory.

² I use the terms 'political theory' and 'political philosophy' synonymously.

legitimacy studies frequently apply the input-output distinction in an ethics-first perspective. They resemble normative-practical evaluations more than empirical analyses of legitimacy. Secondly, I argue that an empirical account should understand the 'object' legitimacy in terms of a socio-historical practice of legitimation. Accordingly, an account of legitimacy depends on the study of dynamic societal processes from different, but systematically related, perspectives. A 'static' view of legitimacy as a constellation of citizens' (input- or output-oriented) beliefs about political order is only of limited help. The purpose of making these two arguments is to indicate the sort of difficulties and considerations that must be addressed in developing a full and realistic account of political legitimacy. I conclude that the study of political legitimacy requires a 'practice turn' based on a systematic cooperation of political theory, sociology and the history of ideas.

Empirical analysis or evaluative description – two different subjects, two different functions to the use of 'legitimacy'

It is a trivial fact that the validity conditions of a statement about legitimacy³ depend on the context in which the statement is made: in a normative-practical critique or in an empirical analysis. At the same time, however, this differentiation is not acknowledged appropriately in the research on political legitimacy. It is thus necessary to review the distinction between two kinds of subject legitimacy-statements can principally refer to and between two functions they can yield. In that regard a closer look at the differences between the terms 'legitimacy' and 'legitimation' and between an empirical-analytical and a normative-practical usage of 'legitimacy' is helpful. Let me begin with the distinction between legitimacy and legitimation. This distinction harks back to Max Weber's account of a legitimate order. According to Weber, social order (and thus also political order) is basically a relationship of actions oriented by certain maxims. In calling something a social order, Weber argues, it does not matter why the actors orient their behaviour toward the maxims in question – be it fear of sanctions in case of non-compliance or because they consider according behaviour to be normatively ideal. Weber argues, however, that only in case of an order that 'enjoys the prestige of being considered binding' do we speak of a 'legitimate order' (Weber 1978: 31). Based on this reading, any kind of order is legitimate when it is valid, that is, when the behaviour in question is generally ('on average') believed to be normatively right:

³ With Weber (1978) and Berger and Luckmann (1966) I understand legitimacy in a broad sociological sense as a feature of every kind of social order. However, when I sometimes speak of 'legitimacy' or 'legitimate order' I have a political order of rule in mind.

Only then will the content of a social relationship be called an order if the conduct is, approximately or on the average, oriented toward determinable "maxims". Only then will an order be called "valid" if the orientation toward these maxims occurs, among other reasons, also because it is in some appreciable way regarded by the actor as in some way obligatory or exemplary for him. (Weber 1978: 31)

Following Weber one could generally say that questions of legitimacy concern a particular validity claim: namely, the claim that a social relation counts as acceptable in the light of certain principles (maxims). Let us now assume a political order to be the specific type of social order that organises 'the authoritative allocation of values in a society' (Easton 1965: 30). Then the legitimacy of a political order might basically be described as its 'worthiness' to be an acceptable organisation of value-allocation:

Legitimacy means that there are good arguments for a political order's claim to be recognized as right and just; a legitimate order deserves recognition. Legitimacy means a political order's worthiness to be recognized. This definition highlights the fact that legitimacy is a contestable validity claim; the stability of the order of domination (also) depends on its (at least) *de facto* recognition. (Habermas 1976: 178)

Based on this view, the difference between legitimacy and legitimation can be defined as follows. From a sociological perspective, both represent different views on the same social relationship. Legitimacy refers to the following fact: the claim of a society's order of value-allocation as to being right is generally (not) acceptable to the society's members. In this sense, one might say that legitimacy means a societal state of 'the general willingness to accept substantially still undetermined decisions within certain limits of tolerance' (Luhmann 1969: 28; my translation)⁴. Whereas legitimacy implies a statist view, legitimation, on the other hand, concerns the dynamics of this relation. It refers to all kinds of acts and processes that (aim to) establish the general view that a political order is (not) acceptable.

Thus, analytically speaking, the concepts of legitimacy and legitimation put the focus onto two different subjects. On the one hand, to speak of a certain type of legitimacy (f.e. democratic legitimacy) refers to a particular type of *reason or explanation* on the basis of which members of a political order

⁴ German original: 'Man kann Legitimität auffassen als eine generalisierte Bereitschaft, inhaltlich noch unbestimmte Entscheidungen innerhalb gewisser Toleranzgrenzen hinzunehmen.'

generally view the order of rule as acceptable. On the other hand, to speak of legitimation is to speak of *acts or processes* through which views about the worthiness of an order are established. Obviously, both are connected. I will come back to this in the next chapter. At this point it is only important to note that the empirical manifestation of legitimacy is successfully operating legitimations in a given society.

A second distinction concerns two different functions of legitimacy statements. Depending on the context, a legitimacy statement either is directed to the *establishment* of a certain view about the worthiness of a political order or it aims at the *description* of such practices and processes and the social relations they establish. In other words, there is a difference between an actor's and an observer's use of the term legitimacy (Barker 2007: 20-21) – or, in other words, between a normative-practical and an empirical-analytical use (see also Peters 2005: 97-103). What is described in an empirical use of legitimacy 'will most immediately be the making of claims, or the attribution of meaning, however expressed, by political actors' (Barker 2007: 20). However, a philosophically inspired reader might question whether there exists a purely empirical-analytical use of legitimacy in the first place. Legitimacy, it is often assumed, is an 'essentially contested concept',⁵ meaning that it is '*appraisive* in the sense that it signifies or accredits some kind of valued achievement' (Gallie 1956: 171). According to this view, a speaker using the word legitimacy always also performs a judgment and thus engages in a normative use of legitimacy. To a certain extent that is true. In the study of legitimacy the empirical subject under consideration is a normatively structured social relationship. As a consequence, its description cannot rely on observation in the strict sense, but is finally based on a judgment on behalf of the researcher. The researcher has to do what Weber describes as interpretation ('*rationale Deutung*') and understanding ('*Sinnverstehen*'). According to Weber, to describe a social action is to hypothetically explain in what sense it is meaningfully related to (other actions in) its social context (Weber 1978: 4-22). And such explanations are based on judgments, for example, about what action would have been rational (in whatever sense) given the specific situation. Normative judgments of this kind, which serve a hermeneutical purpose in the reconstruction of meaning, are unavoidable in the analysis of legitimacy (as in that of any social reality). That, however, does not affect the difference between an empirical-analytical and a normative-practical use of the term 'legitimacy'. Not every statement about legitimacy is a normative statement that commends to accept or reject a certain political order as justifiable.

⁵ See Hurrelmann, Schneider and Steffek (2007a). For an overview of the literature on the idea of an essentially contested concept see *Collier, Hidalgo and Maciuceanu (2006)*.

One might better appreciate that based on Searle's (1962) argument about the distinction between the meaning of a word and the function of the speech act in which it is used.⁶ Searle doubts that words can have a 'commending meaning' - i. e., a meaning that makes their use appraisive per se. Although some words - like 'good' or, as I think, 'legitimate' - can be understood as terms of praise, not every speech act in which those words are used in their literal meaning performs an act of praise or of appraisal. It is only in the context of *calling* something good (or legitimate) that an act of praise is performed. On the other hand, 'good' (and 'legitimate') can be seen as terms of praise, because if these words are used in the context of calling something good (or legitimate), those speech acts *always* entail a favorable assessment. Thus, it is due to the meaning of the word good (or legitimate) that saying 'X is good (legitimate)' is an act of commending and not an act of dissuading. Nevertheless, it does not follow that saying 'group Y views X as good (legitimate)' is an act of commending. Searle contends that the meaning of a word must be determined by the way it is used, but to extrapolate something like a 'commending meaning' from the ways in which the word good (or legitimate) is used is to confuse its meaning with its function in simple indicative sentences:

[T]he mistake is to suppose that an analysis of calling something good gives us an analysis of "good". This is a mistake because any analysis of "good" must allow for the fact that the word makes the same contribution to different speech acts, not all of which will be instances of calling something good. "Good" means the same whether I ask if something is good, hypothesize that it is good, or just assert that it is good. But only in the last does it (can it) have what has been called its commendatory function. (Searle 1962: 429)

To get a clearer picture of what is involved in the empirical analysis of political legitimacy, it is important to keep the distinction between legitimacy and legitimation and the distinction between normative-practical and empirical-analytical statements about legitimacy in mind. Based on that, I will now demonstrate in what sense studies that use the input-output distinction as operationalization to measure EU's legitimacy are in fact of little help to an empirical account of legitimacy.

⁶ Searle uses the term 'good' as an example, but I find that the part of his argument that is of interest here covers the term 'legitimate' as well.

The input-output distinction in EU legitimacy studies: an ethics first perspective

Studies of EU's legitimacy that apply the input-output distinction often contribute to normative-practical reasoning about the EU instead of its empirical analysis. In my view, they make normative-practical statements by giving 'evaluative descriptions' and, as such, come closer to ethics-first than empirical-analytical approaches to legitimacy. Following an argument of Quentin Skinner (1973), 'evaluative descriptions' have a commendatory function to ultimately establish the political system in question as (il-)legitimate. In a discussion of empirical theories of democracy, Skinner argues that a theory of democracy that first defines a certain ideal of democracy and then matches a historical political order against it, is making a normative evaluation rather than providing a description:

This follows from the (empirical) claim that the ideal embodies the conditions necessary and sufficient for being able to say of a political system that it is genuinely a democracy, and from the (linguistic) fact that to make this assertion about a political system is standardly to commend it. (Skinner 1973: 299)

There are of course many good reasons to conduct evaluative descriptions. It is, however, important not to confuse them as empirical analyses of political legitimacy. Rather, they resemble what is called 'non-ideal theory' in political theory. Whereas ideal theory seeks to develop a realistic utopia in a more or less purely thought-experimental manner, non-ideal theory reflects on the moral value of empirical, real-world situations.⁷ It is in the latter sense that evaluative descriptions of political order refer to empirics. They represent well-elaborated practical judgments about real-world political orders. Their function is not to describe, but to justify an empirical order as (not) acceptable in the light of certain (however defined) criteria. Admittedly, the difference between an evaluative description and empirical analysis of political legitimacy is ambiguous. One might say that there are two types of evaluative descriptions, depending on the origin of the normative standards applied. It makes a difference if those standards are generated in ideal theory or if they are the outcome of foregoing empirical analysis and can be assumed as norms operating in contemporary societies. It is fair to say that in the latter case a distinction between evaluative description and empirical analysis is difficult to maintain.

⁷ For the difference between ideal and non-ideal theory in political philosophy see Simmons (2010) and Schaub (2010).

With regard to our concern, however, it is important to note that the distinction between input- and output-oriented legitimacy has not been established by empirical analysis. Rather, it has been established in a reflection of the historical discourse of ideal political theory. Fritz W. Scharpf introduced it in the 1970s as a typology of different standards by which contemporary normative democratic theories evaluate the worthiness of a political system (Scharpf 1971: 21). In other words, the distinction between input- and output-oriented legitimacy is an application of a systems-analytical view to the discourse of ideal theory meant to categorize different ideal arguments about democratic legitimacy (see also Scharpf 1999: 6). By today this context seems almost forgotten. In political science studies about the EU's legitimacy, the distinction frequently appears in a somewhat reified manner. In fact, it is commonly accepted to use input- and output-oriented legitimacy as normative standards for assessing (parts of) the EU's legitimacy without further ado.⁸

However, even if it has faded into the background, the original meaning of the distinction still reflects in persistent problems to its use in legitimacy analysis. Up until today the characteristics of input- and output-oriented legitimacy are quite indeterminate (Lindgren and Persson 2011). Accordingly, there is a variety of criteria to choose from if one wants to assess the input- or output-legitimacy of a political order.⁹ One might respond that this can simply be corrected by specifying the concepts. However, their specification is problematic in principle given their original meaning as abstract categories subsuming different legitimacy arguments. Even more so, since the characterisation of two independent types of democratic legitimacy arguments as 'input-oriented' and 'output-oriented' respectively is questionable in the first place. In this regard many have objected that a democracy cannot achieve output-oriented legitimacy without input-oriented legitimacy (f.e. Abromeit 2002; Höreth 1999; Schäfer 2006; Wessels and Katz 1999). One might answer this objection by arguing that:

[I]n democratic nation-states, however, input- and output-oriented legitimacy coexist side by side, reinforcing, complementing, and supplementing each other – which is why the theoretical distinction introduced here can be extracted from a close reading of normative

⁸ For example Chrysochou (2002), De Ruyter (2010), Kohler-Koch (2000), Radaelli and O'Connor (2009).

⁹ To give only a few examples, input-oriented legitimacy is referred to procedural legitimacy (Enderlein (2006)), transparency and access to information (Héritier (2003)), democratic voice (Hodson and Maher (2002)), citizen involvement (Höreth (1999)) or authorization, responsiveness and accountability of power holders (Meyer (1999)).

treatises but is not usually explicated in the praxis of political discourse.
(Scharpf 1999: 12)

However, this is beside the point, because the objection says that from the point of view of *normative democratic theory* there is a logical relation between what the input-output distinction marks as two independent pillars of democratic legitimacy. And this critique, in turn, might indicate that the original basis for the distinction of input- and output-oriented legitimacy arguments has changed – namely, the discourse of normative democratic theory. Admittedly, the input-output distinction has some plausibility in characterising two views ‘in the history of normative political theory’ (Scharpf 1999: 6). But note the historical dimension here. Is it not plausible to assume that the historical back and forth in the overall shift from monarchy to democracy is paralleled by a back and forth in the intellectual struggle to make sense of that? And if so, could not two independent approaches explaining the normative value of democracy represent a corresponding transitory phase in intellectual history? What speaks in favor of the latter is that a somewhat integrative position has gained considerable weight in recent democratic theory: Namely, the view that epistemic and procedural justifications of democracy are interdependent. According to that, a full understanding of the idea of democracy has to acknowledge that the worthiness of procedure and outcome are dialectically related in a democratic order (Estlund 2008; Habermas 2001; Peter 2008; Schmalz-Bruns 2005).

Which of the above descriptions of the idea of democratic legitimacy is adequate, then? Maybe all three are – if the hypothesis about the development in intellectual history is correct. And that brings us back to my main concern in this chapter. To find an answer to this question the view from normative political theory alone – an ethics-first perspective – is insufficient. Instead, the study of legitimacy needs an empirical turn that gives more attention to how ideas work in societal practice. Note, however, that such an empirical turn is fundamentally different from the one recently proposed by Susana Borrás and Thomas Conzelmann (2007). They suggest to ‘make a step towards an operationalization of the normative standards employed by different conceptions of democracy and to apply those to the empirical analysis of the democratic credentials of specific SMG [soft modes of governance] in the EU’ (Borrás and Conzelmann 2007: 540). From a variety of normative democratic theories they deduct an encompassing list of ‘empirically accessible’ (ibid.: 540) normative criteria against which the SMG of the EU shall be matched. I do by no means doubt that a better operationalization of normative theories is needed to match empirical reality more precisely. I do, however, doubt that the normative criteria Borrás and Conzelmann apply are ‘empirical yardsticks

for assessing democratic legitimacy' (ibid.: 540). On the contrary, they are deducted from ideal theory. By the same token, their approach is no part of 'a research agenda that is ultimately an empirical one' (ibid.: 531). To draw attention to the problem of operationalization of normative democratic theories does not change the fact that, finally, the aim remains to match the EU against pre-given normative ideas established in ideal theory. This research agenda doubtlessly includes an empirical analysis of the EU, but its overall character is not that of an empirical analysis of political legitimacy. Based on the above reflections, an empirical account would focus on which and how explanations or ideas work in the context of the EU's justificatory practice. For that, it is necessary to leave behind an ethics-first perspective. A more realistic account of EU's legitimacy has to start not from legitimacy arguments in normative political theory, but from the description of the character of arguments, explanations and ideas working in the empirical justificatory practice of the EU itself. There is a need for a turn to the description of legitimacy as a *practice* of legitimation in historical societies.

Legitimacy as 'object' of analysis: the need for a practice turn

The previous section conveyed the impression that the input-output distinction is mainly used in the context of a normative-practical evaluation of EU's legitimacy. Admittedly, that is a somewhat one-sided description. My aim was to illustrate in what sense legitimacy research is driven by an ethics-first perspective and how that can be detrimental to an account of political legitimacy. In fact, the input-output distinction is also applied in empirical-analytical studies of legitimacy. It is used to categorise individuals' beliefs (and recently also claims in political communication) about the legitimacy of politics. However, this use is illustrative of another aspect in which legitimacy analysis needs more realism. It is characteristic of a view that traces legitimacy statically by applying quantitative analysis of entities like beliefs or compliance behaviour (Scharpf 2007: 7) or by 'mapping' claims and statements (Hurrelmann et al. 2005). Doubtlessly beliefs, protest and statements can be categorised as input- or output-oriented. The question, however, is to what degree that contributes to an understanding of political legitimacy in a given society.

The static view of legitimacy: beliefs, behavior, claims

Empirical approaches usually conceptualise legitimacy based on an assumption developed in normative political theory, namely that political

legitimacy refers to 'some benchmark of acceptability or justification of political power or authority and - possibly - obligation' (Peter 2010). Broadly speaking, then, legitimacy analysis is about how that benchmark operates in given societies. It is, however, striking that dominant strands in empirical legitimacy research understand that in a somewhat static manner. Albeit differences in method and focus, they all finally account for legitimacy in terms of the degree to which citizens believe their order of political rule as justified. Three strands are dominant: an attitudinal (a), a behavioural (b) and a discourse-analytical approach (c).

a) Survey-based public opinion research gives an account of political support by analyzing citizens' beliefs and attitudes (f.e. Hooghe 2003, Kaase/Newton 1995). Here, legitimacy is traced as individuals' beliefs in legitimacy, which is seen as one among several forms of political support. The basic problem to this approach is the difficulty to define which of the attitudes displayed refer to citizens' beliefs in legitimacy or to other forms of support (Westle 2007). Critics ascribe that to the limited and theoretically pre-selected range of evaluations offered to respondents (Dryzek 2005) and conclude that opinion surveys are principally ill-suited to study individuals' (legitimacy) beliefs.

b) The problem of creating empirical artifacts is evaded by a behavioral approach (f.e. Gilley 2006; Rucht et al. 1999). In this perspective, it is assumed that (non-)compliant or (un-)conventional political behavior (for example, voting or protest behaviour) informs about the degree to which the citizens' view their political order as justified. Here, critics object that behavioral approaches suffer from a basic ambivalence. Because it is 'impossible to infer the motivations that underlie political action' (Hurrelmann et al. 2007b: 8), the relation between individual beliefs and the observed behavior remains ambivalent.

c) Finally, a recent strand extends the scope of analysis to (de-)legitimation processes in the public sphere, which are assumed as decisive for the generation and transformation of individual legitimacy beliefs. This approach aims to describe (changes in) legitimation discourses, mainly in quality newspapers (Biegoń et al. 2010; Hurrelmann et al. 2009). Based on coding schemes different types of legitimation statements are categorised regarding which claims are made by which actors about what political object (Schneider et al. 2007: 133-145).

All these approaches offer valuable insights from different and complementary perspectives. When I argue that they are in need of more realism, my suggestion is not to neglect them. Rather, I would like to draw

attention to the fact that they all share a characteristic assumption which implies a too narrow view of the range of objects of legitimacy analysis. Albeit the turn from attitudinal to behavioral to discourse-analytical approaches extends the scope and draws some attention to the dynamics of legitimation, all these views suffer from a static understanding of the concept legitimacy. They assume legitimacy has the following structure: political legitimacy refers to a constellation of individual beliefs in a group of people with regard to their system of political rule. The rationale of each approach is to find the best (direct or indirect) way to map the constellation of individual beliefs in a given society. It is in this light that the input-output distinction seems attractive as a way to categorise different beliefs (Radaelli and O'Connor 2009) or legitimacy statements (Hurrelmann et al. 2005).

Assuming legitimacy as a constellation of individual beliefs somewhat parallels the view of normative political theory. However, it is an understanding too static, even if it is acknowledged that this constellation might change over time (as the discourse-analytical approach does). Although it has some plausibility to refer political legitimacy to individuals' beliefs, it is crucial to note that the latter represent only one of several aspects relevant to an account of political legitimacy. In the following I want to suggest that a more sociological view of legitimacy paves the way to a richer account of political legitimacy. It helps to acknowledge the dynamic structure of legitimation as a societal practice and, accordingly, draws attention to additional aspects of political legitimacy that have not been adequately recognized so far.

The reflexive view of legitimacy: legitimation as societal practice

Criticising the influence of Max Weber's account, David Beetham (1991b: 6-9) notes that social scientific research on political legitimacy is mistakenly driven by an almost exclusive focus on individuals' beliefs concerning political power. Contrary to that, he argues, 'the normative structure of legitimacy' suggests a need for a multi-dimensional analysis (Beetham 1991b: 64-99). Although I generally agree to Beetham's critique, I do not think that Weber's account is responsible for the suggested shortcomings, but its frequent misperception. Weber's relevance for an account of political legitimacy is not his typology of legitimation principles on which political systems are based. That typology is owed to his historical context and, as Beetham (1991a) shows, inadequate for the description of current regime types. It is, however, often overlooked that Weber ascribes to the notion of legitimacy a much broader meaning in his basic sociological terms. He argues that - among usage, custom and self-interest - in stabilising social relations, the most effective mechanism

is the fact that actors often are 'guided by the belief in the existence of a legitimate order' (Weber 1978: 31). Here, the meaning of 'belief in legitimacy' ('Legitimitätsglauben') indeed refers to a social action or relation being viewed as justified in the light of normative ideals. However, it is crucial to note that Weber is not primarily interested in these beliefs as such. For him, it is 'the belief in the *existence* of a legitimate order' that is crucial to the explanation of structures in social relations. That is a fine, but essential difference. One might say that it adds two layers of reflexivity which are not adequately acknowledged (a-b) and, in turn, imply a considerably extended research agenda in the study of political legitimacy.

a) In Weber's view the 'belief in the existence of a legitimate order' explains social structures in two different ways. In a somewhat 'direct' sense, actors regularly comply with an order *they* view as ideal because they feel an obligation to do so. Based on this assumption individual legitimacy beliefs have become the main object of empirical legitimacy studies. However, as Weber argues, there is a second, 'indirect' way in which the belief in the existence of a legitimate order orients social action. And that is when actors assume *others* to be oriented by a normative order and to act accordingly. Weber's example is a thief who hides his action: 'The fact that the order is recognized as valid in his society is made evident by the fact that he cannot violate it openly without punishment.' (Weber 1978: 32) In other words, actors take a reflexive attitude to the normative orders valid in their society – independent of whether they personally accept them as legitimate or not. This suggests that legitimate orders have a societal existence which is somewhat independent of individuals' beliefs.¹⁰ The important consequence is that – beyond individual beliefs – valid normative orders appear as an independent object of analysis.

b) A second dimension of reflexivity is implied in Weber's view. The relevance he ascribes to 'the belief in the existence of a legitimate order' points to the fact that (conscious) social action is a process of everyday interpretation and judgment. People (more or less tacitly) interpret situations in light of what they assume to be the valid normative order in their society and based on that they decide to follow their obligations and/or interests.¹¹ This suggests an understanding of the very concept of social order as dynamic. Peter L. Berger

¹⁰ That does not contradict the fact that finally their ontological basis is in the minds of individuals (see Searle 1995: 8-12; 2002).

¹¹ Weber adds that this is a view too rationalistic. However, although all action is irrational to a certain extent, he assumes that a sociological account has to focus on the rational structures of social action.

and Thomas Luckmann (1966) have made this point most explicitly. They explain the process of generation, reproduction and transformation of social order as dependent on an ongoing societal practice of legitimation.¹² Legitimation here means a process of “second-order” objectivation of meaning’ (Berger and Luckmann 1966: 110). Its societal function is to maintain or restore the belief in the existence of legitimate order when it becomes problematic. That, Berger and Luckmann (1996: 111) argue, is a continuous problem to every society because ‘the objectivations of the (now historic) institutional order are to be transmitted to a new generation’. In this view, legitimation is a ubiquitous societal practice of making sense of the existing institutional order – and this practice entails not only public justification but explanation as well:

Legitimation “explains” the institutional order by ascribing cognitive validity to its objectivated meanings. Legitimation justifies the institutional order by giving a normative dignity to its practical imperatives. [...] Legitimation not only tells the individual why he *should* perform one action and not another; it also tells him why things *are* what they are. In other words, “knowledge” precedes “values” in the legitimation of institutions. (Berger and Luckmann 1966: 111; italics original)

This social constructivist view suggests extending the scope of political legitimacy analysis in two dimensions. First, legitimacy refers to an ongoing societal practice of legitimation, an ‘observed activity’ (Barker 2001: 2). The object under consideration ‘is not legitimacy as a state of the social system’ (Bourricaud 1987: 63), but ‘the way in which, within any settled or established power relations, self-confirming processes are at work to reproduce and consolidate their legitimacy’ (Beetham, 1991b: 99). Second, the concept of legitimation as it is applied, for example, in discourse-analytical approaches has to be broadened. Here, legitimation is operationalized as an evaluative statement that can ‘be captured in three parameters: its object – that is, the element of the political order to which it refers – whether the assessment is positive or negative, and the pattern of legitimation (supporting argument or benchmark) used’ (Schneider et al. 2007: 135). A coding scheme based on this understanding of legitimation cuts out too much data. It is insensitive for any kind of explanatory or assertive statement by which, for example, rulers aim to establish facts about their own performance – and thereby indirectly justify themselves. When German chancellor Angela Merkel publicly addressed the

¹² A corresponding view of the ontological structure of social reality is described by John Searle (2010).

German citizens during the financial crisis 2009 and said 'We say to the savers that their savings are safe'¹³, she performs an act of legitimation by stating a (supposed) fact. Seen in this light, we should expect a political order to legitimize itself not only when they are explicitly challenged, but on a routine basis. This is also suggested by David Easton when he notes that even

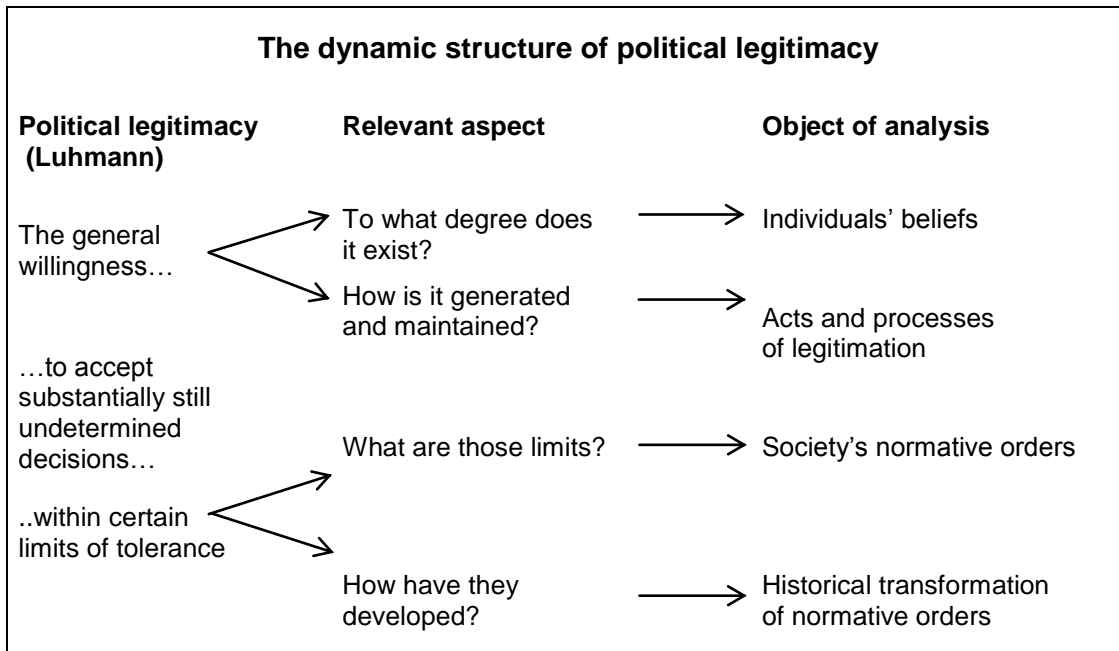
systems free from any visible threat of stress should find it continuously necessary to attend to the renewal of sentiments of legitimacy. [...] At the least, the behaviour of all systems suggests that there is the fear that without constant efforts to inspire a conviction about the rightness of the regime and its authorities, members might quickly lose the feeling that there is a special "oughtness" about the outputs. (Easton 1965: 308)

Based on a sociological understanding, then, political legitimacy shows empirically in ('on average') successfully operating acts and processes of legitimation of the political order in a given society. One implication is that the constellation of individuals' beliefs in the worthiness of their political order ('Legitimitätsglauben') is indeed an important aspect in the study of political legitimacy, but only one among several.

The study of political legitimacy – toward a broadened research agenda

The different dimensions in the study of political legitimacy and how they are related can be illustrated based on a definition of Niklas Luhmann. He describes political legitimacy as 'the general willingness to accept substantially still undetermined decisions within certain limits of tolerance' (Luhmann 1969: 28; my translation). This definition suggests four aspects and four corresponding objects of analysis (a-d).

¹³ 'Wir sagen den Sparerinnen und Sparern, dass ihre Einlagen sicher sind.'



a) The first aspect, which refers to individuals' beliefs, is the degree to which such a general willingness exists in a society. The approaches to empirical legitimacy discussed above focus on this aspect. One might doubt that the discourse-analytical approach belongs here, as it claims to map changes in legitimation discourses.¹⁴ These changes, however, are traced by the (change in) number of legitimacy statements subsumed to pre-codified types of statements and actor-groups. Thus, albeit its elaborated method, it finally maps the constellation of individual legitimacy beliefs expressed through (de-)legitimising statements.

b) The second aspect concerns a description of legitimation mechanisms. This comprises all acts and processes contributing to the establishment and maintenance of the general willingness of a society's members. The range of relevant acts and processes transcends evaluative statements in public political discourse. Let me mention three examples. First, communicative acts of legitimation usually combine explanation and justification. Because the aim is to trace how rulers publicly 'make sense' of events and actions, standardised text analysis is problematic. Instead, interpretive methods are needed which regard the concrete situational and communicative context of speech-acts.

Second, beyond explicit (explanatory or justificatory) communication, David Beetham points to the role of 'actions which provide evidence of consent' (1991b: 18) – like citizens taking part in elections or subordinates swearing

¹⁴ I refer to the approach of Schneider, Nullmeier and Hurrelmann (2007) which is the most elaborated in that field.

public oaths. Such actions bear a 'publicly symbolic or declaratory force, in that they constitute an express acknowledgment on the part of the subordinate of the position of the powerful' (Beetham 1991b: 18). Here, the 'belief in the existence of a legitimate order' is not instilled through justification, but by display to all society-members that the order of rule actually is valid – and to be counted on.

Third, Luhmann (1969) stresses the effect of legal procedures on the sense of a general willingness to accept decisions. He argues that, for example, legislation and due process fulfill a latent function of legitimation beside their 'visible' purpose. Through channeling communication they convey themselves as oriented toward the common good and diffuse conflicts by mitigating protest respectively. This latent legitimizing function of legal procedures, Luhmann argues, can account for the astonishing phenomenon of an 'almost motiveless' general acceptance of decisions in modern democracies (Luhmann 1969: 27-28).

c) The third aspect concerns the context of legitimation practice. On what condition are legitimations successful? What are the 'limits of tolerance' that separate the acceptable from the unacceptable in a society? Sociology of knowledge has drawn attention to the dialectics of the socio-cognitive formation structuring individuals' expectations and views and, at the same time, being reproduced and transformed by autonomous individual thought. This relation of a 'situational determination' of all thinking (Seinsgebundenheit des Denkens) (Mannheim 1936: 69) implies societal normative orders or the 'modern complexes of knowledge' (Habermas 1987: 398) as further object of analysis.

d) The last dialectics finally implies a fourth aspect to the study of legitimacy. The normative order that marks the boundaries for what is (on average) viewed as acceptable in a society is itself socially constructed. The 'limits of tolerance' for what is acceptable with regard to the political order are subject of steady socio-historical transformation. Accordingly, the historical development of the respective societal 'orders of thought' has to be traced.¹⁵ This is a central line of argument in Jürgen Habermas' account of political legitimacy. He explains the democratic political order in western societies with a historical shift in their moral-practical normative order. According to that, a turn from a pre-modern to a modern structure of societal knowledge has

¹⁵ Quentin Skinner's approach to the history of ideas is exemplary in that regard (see Skinner 1989; 2002).

changed those 'limits of tolerance' within which a political order is generally seen as normatively acceptable.¹⁶

These remarks have illustrated in what sense a more reflexive view of legitimacy implies a multi-perspectival analysis. However, I do not say that methods necessary to conduct such an analysis are already at hand. It is for example still uncertain how to conduct a systematic empirical analysis of something like a society's normative order. However, my only aim has been to illustrate how the study of societies' constellations of individual beliefs has to be complemented. If legitimacy is understood as 'the general willingness to accept substantially still undetermined decisions within certain limits of tolerance' (Luhmann 1969: 28; my translation), then a full account of political legitimacy includes three dimensions that go beyond the mapping of individuals' beliefs: the analysis of social mechanisms of legitimation, a society's normative order and how that order has developed.

Conclusion

In this paper I have suggested to strive for a more realist view in the study of political legitimacy that describes the 'way the social, economic, political, etc. institutions actually operate in some society at some given time' (Geuss 2008: 9). I have argued that two tendencies stand in the way of such a realist account of legitimacy. Firstly, there is a need for an empirical turn in the analysis of legitimacy to overcome a widespread ethics-first perspective. Instead of empirical analysis, studies frequently give evaluative descriptions and, as such, operate in the mode of normative-practical evaluation. Secondly, I have argued that the analysis of individuals' legitimacy beliefs is based on a view too narrow of legitimacy. In a more sociological, reflexive perspective I have described the dynamic normative structure of legitimacy in terms of an on-going societal practice of legitimation. In this view different kinds of objects are related in the study of legitimacy: individuals' belief, acts and processes of legitimation as well as a society's normative order and its historical development.

To conclude, more realism in the study of legitimacy means – somewhat counter-intuitively – to overcome the empirical focus on beliefs, attitudes and compliant behaviour. It means to understand political legitimacy as a dynamic concept referring to a normatively structured societal practice of legitimation,

¹⁶ I adopt this perspective on Habermas' theory of law and democracy as part of a general social theory in Gaus (2009).

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the analysis of which requires the systematic combination of the perspectives of political theory, sociology and the history of ideas.

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