Multilateral democracy as democratic federalism
beyond the state
Institutional design in a multilevel system

Antoinette Scherz
University of Zurich
Department of Philosophy
Zollikerstrasse 117
CH-8008 Zurich
scherz@philos.uzh.ch

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Abstract
This paper discusses the normative foundations of federalism and how they apply to multilateral democracy. Multilateral democracy as a voluntary association of democratic states forms a complex multilevel structure. This paper argues that multilateral democracy is a federal theory beyond the state. By discussing federalism, however it becomes clear that multilateral democracy is fundamentally also a democratic theory, which is not an inherent feature of federal theories. It requires its member states to be democratic which then recognise each other as equals. On this basis I argue first, that this affects the goals that multilateral democracy aims for and second, that equality of peoples and individuals can be understood as core principles of multilateral democracy.

Key words: Transnational democracy, federalism, institutional design, equality, multilevel.

1 This paper is based on the fourth chapter of my thesis “The Contribution of Normative Theory to the Institutional Design of Multilateral Democracy: An Evaluative Framework for the European Union”.

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Introduction

Multilateral democracy (e.g. Nicolaïdis 2004; 2013; Cheneval 2011; Cheneval and Schimmelfennig 2013) provides an alternative to both the restriction of democracy to the national state and the seemingly unrealisable theories of global democracy. It can be understood as a cosmopolitan approach that does not give up the institutions of the state altogether. However, this generates a multilevel system that demands an institutional structure to regulate the relations between the peoples and between citizens throughout the whole system. Therefore, in this paper I will outline some of the main challenges that such a multilevel structure presents for institutional design by looking at the relevant federal theory tradition.

Multilateral democracy presupposes the democratic status of its member states. The common institutions of multilateral democracy need to respect the diverse democratic institutions in the different member states, as it is based on the mutual recognition of peoples. At the same time, this also means that the institutions need to realise equality of peoples and of all individuals within the whole system. Since the peoples recognise each other as equals, they also have to recognise the fundamental equality of the members of all other peoples. This, however, does not mean that multilateral democracy seeks to establish one unified demos; quite on the contrary, respecting its diverse demoi is fundamental to multilateral democracy. Nevertheless, the mutual recognition between peoples and the opening of their democracies towards one another through transnational deliberative processes that take the others’ perspective into account should also be reflected in the common institutional framework by the establishment of multilevel citizenship, including transnational and supranational rights (cf. Nicolaïdis 2013).

Since being a constitutional democracy is a precondition for entry into multilateral democracies, their domestic institutional structures will not be discussed in detail in the following. In brief, liberal democratic peoples are defined by rule of law and democratic institutions, including the commitment to human rights and the respect for and protection of minorities. Human rights need to be acknowledged and implemented in the national legislation such that, with accession to multilateral democracy, the member states have to acknowledge the human rights protection in the treaty and supranational jurisdiction
concerning these rights. Like Cheneval (Cheneval 2011, 127), I will primarily focus on the specific principles of multilateral democracy and the institutions that follow from them, treating national democratic institutions as presupposed. Furthermore, in contrast to some cosmopolitan theories (e.g. Marchetti 2008, 79 ff.), the institutional design of multilateral democracy does not question how jurisdictional boundaries should be designed, since it is based on established liberal, democratic peoples. As multilateral democracy’s guiding concept of peoples is, however, based on political agency, their institutional structure should empower and thereby include minorities in this agency through regional autonomy.

In the first section, I will argue that multilateral democracy can be understood as a federal theory as it seeks to establish normative principles for a multilevel structure with guaranteed sovereignty to member states. This definition roughly corresponds to the criteria of federalism. Federal theory has, in its longstanding tradition, argued for different purposes of federalism and how the institutional framework has to be shaped in order to make them possible. In the second section, I shall seek to understand what the normative foundations of federalism are and how they apply to multilateral democracy. In the third section, I will discuss some of the main aspects of the institutional design for multilateral democracy.

1 Multilateral Democracy as Federal Theory beyond the Nation-State

Multilateral democracy as a federal theory beyond the state differs from national federalism on gradual but not absolute terms on a spectrum of federal systems. Therefore, it should not be taken as something entirely different. To demonstrate this, I will outline the theory of multilateral democracy and the concept of federalism and then draw comparisons between the two.

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2 Multilateral democracy must engage in the protection of human rights as it is an international institution with high rule-setting competences and some of its rules have direct effect.

3 Severe injustice problems that could lead to secession claims should not arise since member states of multilateral democracy need to have an institutional structure of a constitutional democracy including minority rights. How this issue should be treated if it were to occur would need to be discussed in a further reaching approach of multilateral democracy that also includes non-ideal theory issues.
1.1 Definition of Federalism

In order to know what federal theory can contribute to the approach of multilateral democracy, we first need to know what federal theory is. The conceptual framework for federalism introduced by Watts (1998) distinguishes three concepts: federalism, federal political systems and federations. In this distinction, a 'federal political system' is a descriptive concept that includes different federal arrangements, of which federations are one particular form. Federalism, on the other hand, refers to a normative concept based on broader federal principles. In my opinion, this general framework makes sense but it does not tell us anything about the relation between federalism and federal political systems.

What does it mean for federalism to be a normative concept? And which federal principles are implied here? Watts’ (1998) definitions of federalism and federal systems are not very helpful when facing these questions. He describes federalism as “the advocacy of a pragmatic balancing of citizen preferences for (a) joint action for certain purposes and (b) self-government of the constituent units for other purposes” (Watts 1998, 120). He describes federal systems as the type of political organisation that is marked by the combination of shared rule and self-rule. These definitions lead to two problems: first, the relationship between the two concepts remains unclear, as they seem to be the same but should be something different. Second, the description of federal systems does not distinguish them from other kinds of political systems that have administrative subunits with some form of autonomy. I therefore suggest looking at the concepts of federalism and federal systems as an ideal and its realisations (e.g. Buchanan 1995). Like democracy (Nicolaïdis 2004; Dahl 1989), federalism is both an ideal and an analytical concept with descriptive content that is realised in different political systems which we might call federal systems. Therefore, if we look for a distinct definition of federalism for the ideal form, it should at least to some degree also define the states that embody political systems. This does not mean that federal systems have to realise federalism perfectly in order to be categorised as such, nor does it exclude the possibility of variations. Nevertheless, the general criteria should remain the same for the normative and the descriptive concept.

In the following, I will work out the definition underlying both concepts: federalism and federal system. As we have seen, the definitions provided for these overarching concepts in the empirical theory are not very clear. The normative theory of federalism has not received
much attention in philosophical discussion. Interestingly, the definitional clarity in the literature is higher when it comes to the specific forms of federal systems, specifically federations. For example, Watts defines federations as “a compound polity combining constituent units and a general government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens” (Watts 1998, 121). Similarly, Elazar notes that in federalism, the constituent units are independent political actors whose power is not derived from the centre or the top of the hierarchy, but is rather fixed by the constitution (Elazar 1997, 239–41). This definition corresponds to Riker’s criteria for federalism: “(1) two levels of government rule the same land and people, (2) each level has at least one area of action in which it is autonomous, and (3) there is a guarantee … of autonomy of each government in its own sphere” (Riker 1964, 11).

These definitions have in common the fact that federations are not merely defined by a high degree of decentralisation, but by a juristic element, namely constitutional guarantees. As Osaghae argues, degrees of decentralisation can also be found in unitary states, but federalism is marked by “both qualified decentralization and noncentralization” (Osaghae 1990, 95). Qualified decentralisation in federal systems is different to that of unitary states, inevitable and guaranteed. Decentralisation, in Osaghae’s understanding, presupposes centralisation, which can then be decentralised. Non-centralisation, on the other hand, denotes the fact that in federal systems, states make the final decisions on certain issues.

Against this background, we can define federalism as an ideal which is realised in different forms of federal systems but is generally defined as a compound political unit with (constitutional) guaranteed subunit autonomy. I therefore argue that the guarantee to the subunits is the characterising feature of federal systems and federalism. In this sense, federalism is a constitutional theory. For federations, this guarantee is also given to both levels of government while in confederations the “central” government, having no direct relation to the citizens, is dependent on the constituent governments (Watts 1998, 121). This

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4 Exceptions are (Norman 1994; Føllesdal 2010; Weinstock 2001a; Levy 2008; Kymlicka 2007; De Schutter 2011).

5 Even though Riker talks about federalism, he clearly addresses existing realisations of federalism in national states.
distinction is a conceptual one, not one of degree, and differs in this respect from the degrees of federal systems that Riker suggests, according to their stage of decentralisation. However, if federalism is a normative concept, the question remains: which value is its defining norm? Based on the previous definition, it seems to follow that autonomy is the basic value of federalism. But why is the autonomy of subunits valuable? In contrast to the autonomy of individuals, which is an uncontroversial value in liberal theory, the autonomy of groups is a much more difficult issue since group borders are always arbitrary. Why one specific territorially defined group should have autonomy and not another, smaller or larger one is not self-evident from a normative point of view. I will further analyse federalism as a normative concept in the second section of this paper. In particular, I will determine whether federal autonomy is an intrinsic value or instrumentally valuable, as it targets other goals. Furthermore, I will determine whether these goals are also of importance to multilateral democracy.

1.2 Multilateral Democracy as Federalism beyond the Nation-State

Having established the conceptual framework of federalism as the general normative concept and federation as its realisation in a federal system with constitutional guarantees for both levels of government, it becomes clear that federalist theory is not necessarily restricted to national states. In contrast to Riker’s definition of a federation presented in the last section, multilateral democracy does not apply to a national state with a single territory and people, as it is a voluntary association of nation-states and can therefore never be restricted to a single people. In other words, multilateral democracy is what Nicolaïdis calls a federal vision beyond the nation-state (Nicolaïdis 2001). Nicolaïdis points out that federalism and the national-state historically were not the same. “In short, the 'federal' emerged prior to or in contrast with the 'state' before the two converged” (Nicolaïdis 2001, 440–1). This

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6 There are also other values suggested in the literature. For example, Buchanan (1995) argues for a republican understanding of non-coercion as the basis of federalism.

7 Of course, this problem is not specific to federalism but also concerns nationalism at large.

8 I will refer to countries as “nation-states” to distinguish them from “states” as federal subunits, even though it might be controversial if all internationally recognised countries are in fact “nation”-states.

9 If peoples are understood in a political and not in a strong ethnic or cultural way, which seems to be the normatively more compelling concept, this is also true for some national federal states like Switzerland or Canada or even the United States.
understanding of federalism, which is not equivalent to taking the form of a nation-state, can also be found in Elazar (1997). In this sense, multilateral democracy can be understood as a federal theory.\(^{10}\)

If multilateral democracy is a federal theory, can it be categorised as a specific type of federalism? The European Union – which is currently the closest realisation of multilateral democracy – is often understood as a type of federal system (Scharpf 1994; Majone 1992; Dann 2003; Hix and Hoyland 2011). Watts (1998) and Burges (2000) categorise the European Union as a confederation with elements of a federation. “In the contemporary world, the European Union is basically a confederation, although it has increasingly incorporated some features of a federation” (Watts 1998, 121).\(^{11}\) To understand whether multilateral democracy is a normative theory of federation or of confederation, we have to look at the guarantees it prescribes for both levels. It is clear that the autonomy of the member-states is one of multilateral democracy’s main concerns. This autonomy is specifically guaranteed in the “change competence-competence” regarding treaties that is held by all peoples together (Cheneval 2011, 18). As multilateral democracy is based on several peoples and does not presuppose one demos, its union remains dependent on the member-states. Therefore, multilateral democracy could be categorised as a theory of confederation. However, it also assigns supremacy to multilateral law and jurisdiction in its fifth principle and equal legislative rights to individuals and peoples. This strong legal integration and the representation of individuals on the union level would then speak for multilateral democracy as a federal theory. Overall, it can be argued that multilateral democracy is, in its competence structure, the ideal theory of a middle route between confederation and federation. However, its fundamental difference from general federal theories is that the constitution also needs to secure democratic decision-making. In this sense, the essential contribution of multilateral democracy is that the connection of the units and their common institutions should be democratic.

Some people might argue that conceiving multilateral democracy as a voluntary association influences the kind of federalism it can be. However, the meaning of a voluntary association is primarily that no state can be forced into the union. As Nicolaïdis (2001) points

\(^{10}\) This, however, should not be understood as promoting an understanding of the EU as a federal state.

\(^{11}\) See also Weiler (2001) for a more detailed discussion of the European Union’s federalism.
out, such a voluntary association for common interests was, at the time of the founding of the United States, the general understanding of what federalism signified. It might furthermore be objected that it is too easy for states to exit the union compared to national federations. I would in fact argue that there should be a constitutional guarantee for 'secession' in multilateral democracy. However, this does not make it completely different from other federal theories. For example, Weinstock (2001b) promotes the idea that the constitution of a multinational federal state should contain a clause permitting secession.

It is however true that there is a difference in the kind of unity that multilateral democracy can provide compared to other federal theories. Is it united through a common culture, values or interests? Multilateral democracy does not consist of only one people and does not, therefore, have a single demos or identity. This means that while there is no unity of citizens, multilateral democracy nevertheless regards all citizens of the whole union as equal. In order to provide transnational and supranational rights that protect this equality, multilevel citizenship is needed. This marks a key difference from international organisations, but also from looser confederations. The only common identity that can arguably be applied to multilateral democracy is a political identity that overlaps national identities but is non-exclusive, as suggested in constitutional patriotism (e.g. Habermas 1992). Values that define multilateral democracy are therefore democratic and, in this sense, there is no strong unifying 'cultural' identity. This does not, however, distinguish multilateral democracy in a specific way from federalism in general (e.g. De Schutter 2011). Furthermore, identity is not a precondition of federal states, not even unitary ones, but rather something that develops over time and under the influence of political institutions. The development of political institutions and identity is not unidirectional: they influence each other. Even though this paper focuses on the normative side of federalism and not on the historical development of federation, it should be noted that it is plausible to argue for multilateral democracy as motivated by a common interest, such as economic benefits and security. However, common interests seem to play a key role for the foundation of federations as well. One key motivation to form a union would be an external threat (e.g. Riker 1964). For multilateral democracy, however, the transnational broadening of the freedom of citizens across borders is the most important aim.

The main difference between multilateral democracy and other federal theories is not that multilateral democracy is a voluntary association, but that it is fundamentally democratic. Overall, we can conclude that multilateral democracy is a federal theory which, aside from the inclusion of democratic equality between citizens and peoples, is in no respect categorically
different from other federal theories. In the next section, I will discuss the normative foundations of federalism, exploring what values and goals such a multilevel structure seeks to promote.

2 The Value and Goals of Federalism

In this section, I will discuss the value of federalism and outline further goals that federal systems are believed to achieve. I will use the terms “values” and “goals” in the normative way, which Weinstock refers to as justification of federalism: “A federal system is justified through specific goals that it makes achievable and the promotion of the common good; it is not merely a strategic choice of the involved groups” (Weinstock 2001a, 75–6).\(^\text{12}\)

2.1 Autonomy as the Basic Federal Value?

Power-sharing based on the autonomy of sub-units is the general federal value found in the literature.\(^\text{13}\) According to Young (2005), this is often understood as the right of peoples to self-government, which is problematic if it is comprehended as non-interference. In her opinion, we should rather think of it as non-domination (see also Buchanan 1995), which means that claims of autonomy should not be understood as absolute. In multilateral democracy, the right to autonomy should be understood as more extensive as it also includes veto rights in changes to the treaty and a right to exit.

In general, the understanding that a group has the right to some kind of autonomy is thought to be based on the value that its culture (defined, for example, by language or religion) has for its members. This idea is most prominently outline by Kymlicka who thinks of the nation as a “context of choice.” He argues that “freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us” (Kymlicka 1996, 83). Such an understanding is, however, problematic as the basis of federalism: first, national groups are in fact not as clearly territorially restricted as the theory presupposes (Young 2005; De Schutter 2011); second, the theory does not take into account multi-layered identities (De Schutter 2011); and third, it

\(^{12}\) In my terminology, “instrumental” is not the opposite of normative but simply denotes goals that are not intrinsic to federalism.

\(^{13}\) Consociationalism, in contrast to federalism, is defined by sharing power at the centre (cf. Lijphart 1977).
remains difficult to decide which groups should have autonomy and excludes non-territory-based ones (Norman 1994).

Even if we grant all of this, the autonomy of constituent units alone cannot be founded on the value of federalism because it cannot explain why the unity is desirable. As De Schutter phrases it: “A successful theory of multinational federalism must include two fundamental parts: (i) an argument which shows why a federal state should devolve power to sub-state national groups (why it should not be a unitary state); and (ii) an argument which shows why a federal state is still preferable to secession (why it should still be one state)” (De Schutter 2011, 171). Or, to put it differently, in order to argue for federalism, it is not enough to refer to the autonomy of sub-units since this could also be realised in completely separate states. The value generated through their compound must also be demonstrated.

Furthermore, it has to be noted that it makes a difference whether we justify federalism as a process of a coming together of nation-states or as a federalisation of a unitary state (Weinstock 2001a). This means that the starting point matters for the importance of the justification given. The more elaborate identity-based federal theory of De Schutter (2011) argues that federalism can generate fairness in the context of individuals with multi-layered identities who feel that they belong to more than one cultural group at once. However, this argument seems to be relevant only for federalisation, not for the coming together of nation-states, since it is highly unlikely that such multi-layered identities exist prior to the political institutions.

To conclude, the autonomy of subunits is a fundamental value that federal structures can provide. Yet, federal theory also needs to provide arguments for benefits that the union can foster. For multilateral democracy as a theory about the coming together of states, it is specifically important to argue why such a union of states is positive. I will now discuss different goals associated with federalism and in what sense they apply to multilateral democracy.

### 2.2 Other Goals That a Federal Union Could Realise

Besides autonomy as an intrinsic value of federalism, there are other goals that have been argued to be realisable through the coming together of states in a federal system. I will focus here on five general goals of federalism: (1) military security, (2) liberty, (3) economic efficiency and innovation, (4) democracy and representation, and (5) stability. Because
multilateral democracy is different from traditional federal theories in that it is fundamentally democratic, the question arises of whether it pursues the same goals.

First, one of the most important goals of federalism that has been argued for is military security (Hamilton, Madison, and Jay 2005, Federalist 4; Riker 1964; Bednar 2009, 25–8). Riker argues that federations are always founded in order to face an external threat. This means that states enter into a federation in order to have the necessary size and therefore resources to encounter such a threat. For multilateral democracy, the argument is more concerned with the solid establishment of durable peaceful relationships. This can be understood in the context of Kant’s argumentation in *Perpetual Peace* (1996), which points out that a republican constitution of a state (first definite article: "The civil constitution of every state should be republican") is a necessary but insufficient condition to guarantee the freedom of its citizens as long as the states remain in a state of nature. He therefore argues for a loose federation of states, which can establish a law of nations and forbid war (second definite article: "The law of nations shall be founded on a federation of free states"). As Nicolaïdis argues, the peace ideal may no longer be at the forefront of the debate about the European Union. This might also be the case because according to the democratic peace theory, democracies do not wage war against each other. Nevertheless, two closely linked normative core norms come into the focus for multilateral democracy: non-domination and mutual recognition (2013, 358 ff.). Therefore, the underlying motivation for establishing a transnational or multilateral democracy goes beyond mere peace. Non-domination and mutual recognition will be discussed in more detail in Section 4.3.2.

Second, the liberty argument is founded on the premise that every government is a potential threat to individual liberty (Hamilton, Madison, and Jay 2005). Federalism is seen as a means of restricting governmental power through the proliferation of levels of government which, in turn, entails the addition of further veto players to the decision-making process and the establishment of checks and balances. If we look at multilateral democracy as an alternative to a global unitary state, its multilevel structure does, of course, work in the sense of the liberty argument. The main contribution concerning liberty is for multilateral democracy, however not through the restriction of government but rather the establishment of democracy beyond borders. It thereby aims to expand liberty by establishing transnational and supranational rights for individuals.

Third, economic efficiency and innovation are seen as goals achievable through federalism (Tiebout 1956; Bednar 2009, 28–44). However, this depends heavily on the ability of a
central government to ensure a common market and mobility while maintaining the legislative sovereignty of the constituent units through constitutional rules. Only under these conditions is it possible for the member-state to adopt different laws and the individuals to react to them by selecting the state that best fits their preferences, leading to innovation and efficiency. In this sense, federalism establishes the possibility to exit as an alternative to voice (Buchanan 1995; Warren 2011). Is it thus possible for multilateral democracy to realise these benefits of federalism? Multilateral democracy provides transnational mobility by establishing a right to free movement in the whole system and possibly a common market, while leaving the legislative sovereignty in the hands of the peoples. Multilateral democracy therefore at least has the potential to promote economic efficiency and innovation. However, as its member-states are culturally diverse, the actual mobility costs for individuals are very high.

Fourth, from a democratic perspective, four arguments for federalism can be made: first, the citizenship argument states that having more levels of government increases the likelihood of an active citizenship. This is specifically the case if it creates participation possibilities that are closer to the people (Weinstock 2001a). Second, according to the democracy argument, the possibility to vote in smaller constituencies increases the weight of each vote. Furthermore, the issues that are decided upon at the lower levels are more accessible to citizens (Weinstock 2001a). However, these two arguments are only valid for the process of federalisation and not for the coming together of states. Third, the efficient representation argument declares that representation improves as voters are able to gain experience with their representative at a lower level and re-elect them based on performance (Bednar 2009, 45–52). This, however, is dependent on an integrated party system in which the same political parties are relevant at the different levels of the federal system. Fourth, the reduction of externalities argument states that the integration of states into a federation reduces the externalities between them, or at least provides a democratic platform for their discussion. The latter two arguments are also applicable to multilateral democracy. In order to make multilateral democracy beneficial for efficient representation, an incorporated party system – which is very difficult to implement – seems to be necessary. However, the reduction of externalities is definitely one of multilateral democracy’s main goals.

Fifth, it is generally argued that federalism is fundamentally unstable (Filippov, Ordeshook, and Shvetsova 2004; Levy 2008; Bednar 2009). Yet, it might be more stable than a unitary state comprised of culturally different groups because a federation would grant them
a certain level of autonomy (cf. Hechter 2000). According to Levy (2008), cultural diversity might even increase stability in terms of the division of loyalties. For multilateral democracy, however, this argument (at least as it is now in the EU) might not hold true since the multilateral level might not cultivate enough loyalty. Still, in multilateral democracy, the exit option and therefore also the threat to exit are more viable than in national federations because the member-states retain their international status as states and have a highly-developed institutional capacity (cf. Ziblatt 2006). This means that the incentive to treat other member-states as equals is higher because, otherwise, they have the option to leave the union. Therefore, somewhat counter-intuitively, multilateral democracy is relatively stable in the sense that, if it is comes into being, the commitment to the autonomy of its member states is very strong. On the other hand, there might of course be a greater solidarity problem between the different states, a potential source of instability. In general, we would neither wish for nor expect a multilateral democracy to provide an identity that replaces the national ones (for the EU, such an argument has been made by Risse 2010). The question of just how much identification with the two levels is in fact necessary to generate a federal culture able to sustain a federal system cannot be answered as such. Overall, the risk of disintegration is structurally higher for multilateral democracy than the encroachment of the union.

To conclude, because multilateral democracy is fundamentally a democratic approach, it seeks to promote different goals than traditional federal theory. Even though multilateral democracy is of course also interested in fostering security and economic efficiency, the main aspirations of multilateral democracy is to broaden democracy beyond the nation-state. This should be realised through the reduction of externalities, inclusion in a broader union and the expansion of individual rights.

14 Though Hechter and Okamoto (2001) admit that the empirical evidence is ambiguous (Hechter and Okamoto 2001, 203–4).
15 Though this threat to leave the union is more credible and viable for bigger states, it also provides a minimal security against discrimination for the smaller ones.
16 Eurobaromenter data from the last three years suggests that, in the EU, such two-level identities consisting of a national and a European level are more common than exclusively national or exclusively European ones.
17 For an interesting discussion on the stability of the EU, see (Kelemen 2007).
18 Weiler (2012) describes one of the driving forces of the EU as “political messianism,” which establishes risks of encroachment. However, according to Weiler, this form of goal does not determine the means by which it should be reached and, furthermore, is not rooted in democracy. Therefore, it does not determine the ideal type of multilateral democracy, though it might in fact be a problem for the EU.
3 The Implications of Multilateral Democracy on Multilevel Institutions

In this last section, I will outline the implications multilateral democracy’s status – as fundamentally both a federal and a democratic theory – has on its institutional design. In general, federal theories are not necessarily democratic; on the contrary, federalism was historically speaking first and foremost a means of organising power-sharing between princes, for example in Germany. Even today, federal arrangements are still understood as deviations from democratic equality (Christiano 2006, 103). Federal theory as a commitment to the autonomy of subunits cannot explain the commitment to the equality of individuals because autonomy can also be realised in a non-democratic structure. I will first, briefly discuss whether federal theory can guide the institutional design of multilateral democracy; second, delineate the main implications that multilateral democracy as a democratic theory has on the institutional design; and third, outline the principles of multilateral democracy and the fundamental relations of equality between individuals and peoples, and the balance between the two. These relations are fundamental to multilateral democracy and can be used to develop further details of the multilateral institutional design.

3.1 Federal Theory and Institutional Design

Overall, stability seems to be the most difficult issue of federalism as both levels constantly seek to gain power. This hunt for power generally takes one of two main forms: encroachment from the “union” government or transgression from the states. As preventative measures, Bednar (2009, 95–131) suggests four types of safeguard: first, structural safeguards include the fragmentation of the union government and inter-institutional oversight. Multiple veto players would decrease the possibility of changing policies and opportunities for encroachment. On the other hand, they would also lead to inflexibility. As a counter-measure, multilateral democracy should therefore adapt its decision-making procedure at least in part from unanimity to majority or supermajority decisions. However, this does not apply to treaty changes, as this would violate the foundation of autonomy of the peoples. Second, the popular safeguard consists in government regulation through the public in the electoral process. However, the complexity of the multilevel system might lead to accountability problems. Nevertheless, multilateral democracy should include elections at all levels in order to give weight to all of the different constituencies. Third, the political safeguard refers to the
party system. Here, an integrated party system also seems to be beneficial because it directs the ambition of politicians towards the interests of the union and not only to those of their subunit. Such an integrated party system, while clearly difficult to engineer, would be advisable for multilateral democracy. Fourth, the judicial safeguard refers to the court watching over the constitutionality. This safeguard is specifically effective if it is disinterested (not political) and well-informed. Such an independent safeguard should also be integrated into the institutional design of multilateral democracy, in the form of a supranational court and the national constitutional courts.

Generally speaking, the principle of subsidiarity is a principle against the encroachment of the federal government which states that competences should be allocated to the lowest possible level. However, as Nicolaïdis (2001) convincingly points out, this principle is not a useful guide for the allocation of authority in a multilevel system of collective governance, but is rather a normative principle through the lens of which the horizontal relationship between peoples and the balance of the vertical levels can be considered. Institutionally, this balance depended on the above-mentioned safeguards and on procedures of transparency and reason-giving. To conclude, federal theory emphasises autonomy’s need for constitutional guarantees and provides some direction as to which institutional safeguards a multilevel system requires in order to be stable. However, this is not sufficient to develop an institutional design for multilateral democracy because it does not take democratic principles into account.

3.2 General Implications of Multilateral Democracy as a Democratic Theory

Since multilateral democracy is at its core a democratic theory, this needs to be reflected in its institutional design. This means that being democratic is a precondition for becoming a member. On this basis, the existing member-states have to agree to the admission of new states.19 Since the members of multilateral structures are democratic nation-states, they have highly elaborate institutional structures. Furthermore, in contrast to other federal systems, the cultural diversity of a multilateral democracy is extremely high as the states host one if not more cultural groups. This makes the interaction between the different levels – both

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19 Article 49 of the Treaty on European Union (TEU) specifies the accession process. The conditions which new members have to fulfil are freedom, democracy, respect for human rights and fundamental freedoms and the rule of law (Article 6(1) TEU). States who wish to join the EU have to apply to the Council, which must consult the Commission and the European Parliament. Every Accession Treaty is, however, also subject to ratification by all the member states.
horizontally and vertically – more complex. On the horizontal level, this raises a requirement for mutual respect of the democratic procedures in different nation-states. Constitutional toleration is fundamental to multilateral democracy (e.g. Weiler 2001; Weiler 2002; Cheneval 2011, 135).

Since a constitutional, democratic structure is a condition for membership in multilateral democracy, the union should also ensure that its members remain democratic. To this end, one option would be to exclude member-states that fall below a certain threshold. However, this would leave the citizens of these states (who are nonetheless members of the union) without legal protection. Therefore, a more suitable way to address this issue might be to suspend the voting rights of the common institutions of the state in question.

As already outlined, the guiding principle of multilateral democracy is the “mutual recognition” of the member states (cf. Nicolaïdis 2013, 359–60). Traditionally, mutual recognition regimes in international law address bilateral or multilateral trade agreements among participating parties who agree that “if a product or a service can be sold lawfully in one jurisdiction it can be sold lawfully in any other participating jurisdiction” (Nicolaïdis and Shaffer 2005, 264).20 Mutual recognition regimes can be understood as a form of joint governance, recognising each other’s rules and standards. This process requires standards to be harmonised to some degree but also grants reciprocal jurisdictional authority (cf. Nicolaïdis 1996). Therefore, horizontal as well as vertical structures are required in order to establish mutual trust and monitoring. In multilateral democracy, however, the principle of mutual recognition applies not only to certain trade agreements, but expands to encompass the peoples and their democratic structure in general. This involves a mutual transnational opening between peoples who respect different national identities and political traditions (Nicolaïdis 2004; 2013).

In other words, mutual recognition in a multilateral democracy means that peoples recognise each other’s status as democratically organised communities and realms of justice. This also includes acknowledging the democratic structures of other peoples and recognising the equal moral importance of their citizens. This latter demand means that multilateral democracy should seek to protect individual rights within its system, which would require supranational and transnational rights to be established. States should, for example, provide migrants within the multilateral system with the possibility to gradually re-establish their

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20 For an extensive discussion of mutual recognition, see also Nicolaïdis (1996) and (2007).
rights as full members of society, such that they do not lose their rights by moving outside their state of origin. Furthermore, to guarantee the equality and non-domination between peoples and individuals, a rule-based relationship ought to be established. This means that the peoples in a multilateral democracy would bind each other through shared rules and institutions which allow brute bargaining to be overcome. This can be understood as the formation of a vertical level of governance through some kind of constitutional form. Though there is no formal constitution in the EU, the treaties regulate the relationships between its members and the rules of its institutions. The immediate applicability (direct effect) of European law makes it clear that it also regulates the relationship between citizens. Yet, as Nicolaïdis points out, this process should not simply replace horizontal with vertical domination. Therefore, the vertical dimension should not be understood as hierarchical; rather, the horizontal transnational relation is the basis of multilateral democracy whereas the vertical simply renders it possible (Nicolaïdis 2004; Howse and Nicolaïdis 2008). According to Weiler, this is feasible because “European federalism is constructed with a top-to-bottom hierarchy of norms, but with a bottom-to-top hierarchy of authority and real power” (Weiler 2001, 3). He argues that the quasi-constitutional form of the EU is in fact normatively desirable as it embodies exactly these features of tolerance that the EU values and which are necessary to establish what he calls “constitutional tolerance.” This means that only minimal common standards should be established in a multilateral democracy, while the principle of mutual recognition should prevail. In other words, beyond general conditions for a constitutional democracy, the law and institutions of the member states can be shaped according to domestic traditions and should be accepted by other peoples as alternative but equal realisations of democracy.

From this recognition follows the fundamental equality of the member-states. Their sovereignty cannot be overwritten as it is based on democratic decision-making in the individual states, and therefore unanimity is required for changes in the treaties. This means that every people has a veto in admission to the union and in changes to the treaties (cf. Nicolaïdis 2013, 363), however not in secondary legislation. Furthermore, changes to this mode of operation have to be specifically agreed upon. However, multilateral democracy should be careful not to institutionalise this veto right too strictly. If the people itself decides that it would prefer to be represented in a different way, multilateral democracy could also overcome this state-based representation. This is important as it means that multilateral democracy is open to transformation and does not just freeze the current status quo (Cheneval
and Schimmelfennig 2013, 8). From this also follows another implication: namely, that multilateral democracy could foster self-determination at the local level.

The normative status of peoples in multilateral democracy is fundamentally based on their democratic structure and therefore ultimately on the individuals they represent. However, the equality of individuals is also of great importance in the whole system, since individual interests are not regarded as delimited to the national realm. Multilateral democracy therefore seeks to broaden democracy beyond national borders but needs to take into account the equality of both individuals and peoples at the same time. I will discuss what this equality of people and individuals generally means for multilateral democracy in the next section.

3.3 Principles of Multilateral Democracy and Fundamental Relations of Equality

As discussed in Section 1.2.1, Cheneval’s approach of multilateral democracy develops seven principles specific to certain aspects of multilateral democracy on the basis of an original position that includes representatives of peoples and individuals at the same time. Considering the multilateral original position as the foundation of these principles, it becomes apparent that three fundamental relations of equality are held as presuppositions. These relations include: first, the equality of citizens among each other; second, the equality of the peoples; and third, the equality of citizens and peoples. These three principles represent another way of thinking about the original position.

As these three principles lie at the heart of multilateral democracy, Cheneval’s seven more specific principles of multilateral democracy map onto them.

Table 1: Fundamental relations of equality

<table>
<thead>
<tr>
<th>Fundamental relations of equality</th>
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<tbody>
<tr>
<td>1. <strong>The equality of individuals</strong></td>
<td>Supremacy of multilateral law and jurisdiction (P5)</td>
</tr>
<tr>
<td></td>
<td>Non-discrimination of citizens (P2).</td>
</tr>
<tr>
<td>2. <strong>The equality of peoples</strong></td>
<td>Sovereignty of the statespeoples' pouvoir constituant (P1)</td>
</tr>
<tr>
<td></td>
<td>Non-discrimination of statespeoples (P2)</td>
</tr>
<tr>
<td>3. <strong>The balancing of individuals' and peoples' interests</strong></td>
<td>Equal legislative rights of citizens and statespeoples (P4)</td>
</tr>
<tr>
<td></td>
<td>Reciprocity of transnational rights (P3)</td>
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<td></td>
<td>Two principles of linguistic justice (P6)</td>
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<tr>
<td></td>
<td>Difference-principle for member statespeoples (P7)</td>
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</tbody>
</table>
First, the equality of individuals relates to the supremacy of multilateral law and jurisdiction (P5) and the non-discrimination of citizens (P2). Second, equality of peoples translates into the sovereignty of the statespeoples’ *pouvoir constituent* (P1) and the non-discrimination of statespeoples (P2). It should be noted that the criterion of equality of peoples indicates sovereignty on the one hand, but also non-discrimination for peoples on the other. Finally, the equality of peoples and individuals translates into equal legislative rights of citizens and statespeoples (P4), reciprocity of transnational rights (P3), the two principles of linguistic justice (P6) and the difference-principle for member statespeoples (P7).

This approach allows the account of multilateral democracy to be specified beyond the existing principles for a further or more explicit elaboration of the appropriate multilateral design. I will thus use these three equality relations as guiding principles to further develop the institutional design with Cheneval’s principles as the point of departure. This will be necessary in order to construct a more specific corresponding institutional design, able to capture all of the important aspects. In this respect, the third equality relation can be understood as a balancing principle in the multilevel system since, in cases of conflict between the equality of individuals and peoples, some form of balance has to be reached. Because the seven principles developed by Cheneval seek to cover the whole approach of multilateral democracy, they are applied to the whole of the institutional framework. However, if we want to discuss the details of specific institutions, the balance problem could resurface. This means that the principles provide us with a general outline for the design of the main institutions of multilateral democracy; however, if we want to discuss these institutions in more detail, they cannot provide guidance on how to deal with the tensions between the interests of peoples and citizens. The problem in determining an institutional design for multilateral democracy is that tradeoffs between individuals’ and people’s interests could be balanced over different extensions of issues. Therefore the main challenge is to determine the appropriate units or packages over which the balancing should occur. In order to confront this challenge, the original position is not a useful instrument because it can only rule out unacceptable options. In applying the three relations of equality again to more specific institutions – e.g. representative bodies, citizenship rights and their according principles – the method that I suggest here is more flexible in taking existing institutional structures of the European Union into account. Nevertheless, this approach cannot claim to determine the only appropriate institutional design for multilateral democracy.
Against the background of the discussion concerning the status of demoi and individuals, the question arises of how we should understand these relations of equality. Are they equally important? In general, the equality of individuals should be understood as the most fundamental. Working towards an institutional structure that realises the equality of individuals beyond the state, the equality of peoples is not as fundamental as that of individuals because no restricted demos can ever be ideal or fully legitimate. That said, equality of peoples is important on other grounds. First, the democratic states as realms of justice form a necessary framework through which to realise equality between individuals and thus need to be respected as expressions of the political self-determination of individuals. Second, if peoples mutually recognise each other as equals and enter into a rule-based relationship, brute bargaining shaped by power inequalities can be overcome and non-domination thus be realised. Third, the voluntary agreement of the peoples presumably also contributes to the stability of the framework and links it to domestic structures necessary for the motivation of individuals, such as public discourse and civic education.

Can they contradict each other if the individuals form the basis of the peoples? The balancing of individuals' and peoples' interests does not in fact mean that we have two different entities or that citizens have to develop some kind of a schizophrenic mind-set with two sets of interests. The main question is rather on what level and through which procedures the individuals should be represented. In general, peoples and individuals should be equally represented in order to expand the rights of the citizens of all member states. Furthermore, multilateral democracy should remain sensitive to any form of domination that is not captured in the framework of states.

How is this equality determined? Or, in Sen’s (1980) words: equality of what? Of course multilateral democracy is based on the equality of individuals as fundamental sources of moral concern; however, this equal claim to freedom can be understood in different ways, for example as utilitarian equality, equality of utility, equality of primary social goods in the Rawlsian sense, or as equal basic capabilities. Depending on the concept of equality chosen, certain inequalities could be permitted or even justified. Regarding the equality of individuals in multilateral democracy, I generally subscribe to a Rawlsian account based on primary social goods including “rights and liberties, opportunities and powers, income and wealth” (Rawls 1971, 92). The fundamental rights and liberties as well as opportunities should be equal while powers and prerogatives of authority as well as income and wealth should be
subject to the difference principle. Though Sen rightly points out that this account does not pay enough attention to needs or other concepts of entitlements like non-domination (Sen 1980, 217–9). Therefore, non-domination should also be considered at least in a minimal way. As Sen points out the reason why we attribute importance to resources is, because they enable us to pursue certain life plans. For peoples the concept of capabilities is not particularly useful but non-domination, in the sense of a minimal level of capabilities, is relevant in order for them to be able to fulfil their function for their citizens.

Because individuals should already enjoy the necessary primary goods of democracy through their states, multilateral democracy should mainly provide rights to regulate the relationship between them. Primarily, the equality of individuals relates to the supremacy of multilateral law and jurisdiction and the non-discrimination of citizens. Furthermore, because multilateral democracy is a democratic account, it also requires equal participation rights. Only if individuals can directly elect representatives for at least of a part of the legislative body can they be understood to have legislative rights at all.

For peoples, equality means an equal status that is primarily realised by a veto right in treaty making and equal formal rights in the common institutions. Multilateral democracy should not override the democratic expression of political self-determination. Therefore, national democratic processes have to be respected and multilateral democracy should include in its institutional design all representations of the peoples, such as governments, parliaments and courts. This primarily means that the decision about accession needs to be taken in the democratic process, allowing for public discussion, i.e. through parliaments or a referendum. Second, this also implies that these representations of the people besides the executive should be included in the common institutions. Yet, as non-domination is one of the fundamental goals of multilateral democracy, the question arises of how it relates to the equality of peoples as one of the guiding principles of multilateral democracy. Can non-domination restrict the equality of peoples? Yes, because differences between states in size and power are generally larger than between individuals, domination aspects need to be specially considered in addition to formal equality.

Two main issues concerning domination can be distinguished. First, since national borders are (still) relevant for individuals’ interests, the different sizes of states can lead to persisting minorities and in this sense to the domination of the citizens of smaller states. Therefore,
restricting these asymmetries in representation might lead to the restriction of strict individual equality by weighting votes. However, this does not contradict Rawls’s understanding that freedom can only be restricted by concerns for freedom itself because this measure renders possible the effective use of political participation for citizens of smaller states. Second, size as well as the economic and overall bargaining power of peoples can also provide a potential means for domination in the multilateral system. Restrictions of peoples’ equality are therefore justified if they counteract these power asymmetries, for example through blocking minorities. Rawls argues that the value of freedom, i.e. the extent to which someone can use their rights, depends on their financial resources but that this is regulated through the difference principle (Rawls 1971, 203–5). We could see these restrictions of equality as a non-ideal element until the difference principle has provided the least advantaged with sufficient resources to use their rights without being in danger of domination. This might be partly the case, however, if we consider the size of states, since generally stable power differences cannot be eliminated in this way. Therefore, certain restrictions on formal equality to prevent domination can be understood as realising some minimal form of equal opportunity for peoples.

Mutual recognition helps in general to establish the equality of peoples, as peoples recognise the others’ democratic institutions as equal to their own. However, as this allows for the existence of different democratic systems in the member states, it can also lead to inequalities for individuals – for example in the way transnational or supranational rights are implemented – or to the domination of other peoples through negotiation advantages. However, these differences should not lead to sever inequalities undermining the capability of individuals or peoples to participate. Moreover, not all differences should be understood as problematic. Different democratic systems are the basis of multilateral democracy as these domestic institutions realise the equality of individuals in the first place. Therefore, balancing the equality of individuals and peoples cannot be calculated through a specific metric; however, overall, multilateral democracy seeks to establish institutions that guarantee the formal and participatory equality of individuals while taking the different domestic arrangements as its foundation. This can also be understood as a balance of transnational interest of individuals and protecting their domestic democracies in which they want to be represented. The equality of individuals and peoples and specifically “equal legislative rights” should be institutionally realised through representation and citizenship rights.
4 Conclusion

In this paper, I have argued that multilateral democracy is a federal theory beyond the state. Its main difference to other federal theories lies in the incorporation of democracy into federalism. This means that it leaves its member-states autonomous and guarantees the equality of individuals and peoples in its procedures. In the second section, I demonstrated how the value of sub-unit autonomy is insufficient justification for a federal order, and that other goals are necessary to justify the federal union. For multilateral democracy, these goals mainly include the broadening of democracy across borders – including particularly transnational and supranational individual rights – and the realisation of multilateral recognition and non-domination between peoples.

In general, I have argued that multilateral democracy is fundamentally both a federal and a democratic theory. As a means of developing a refined account of the institutional design, I outlined multilateral democracy’s three fundamental relations of equality. These relations will later be used as guidelines to discuss institutional possibilities that would be fair to both individuals and peoples.
Bibliography


