Representation in Multilateral Democracy

How to Represent Individuals in the EU while Guaranteeing the Mutual Recognition of Peoples?

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Abstract: *The democratic criteria for representation in the European Union are complex since representation involves several delegation mechanisms and institutions. This paper develops institutional design implications for the representation of peoples and individuals and suggests reform options of the European Union on the basis of the theory of multilateral democracy. In particular it addresses how the equality of individuals can be realised in EU representation while guaranteeing the mutual recognition of peoples. Unlike strict intergovernmental institutions the EU requires an additional and independent legislative chamber in which individuals are directly represented. However, strict equality of individuals cannot be the guiding principle for this chamber. In order to avoid the overruling of peoples through supranational majorities, it is necessary to bind the chamber's composition by a principle of degressive proportionality. The representation of peoples, on the other hand, needs to be connected to their domestic democratic institutions.*

Introduction

Ever since democracy moved beyond the city-state, representation has been an essential part of the democratic process. Nowadays, modern democracies make use of the tool of formal representation through election or appointment. The European Union (EU) also employs representational institutions for its legitimation in particular the European Parliament but also the Council and through national parliaments. In the discussion regarding the democratic deficit of EU, its representational mechanisms have been criticised as being too indirect.[1] However, since representation in the EU is more complex due to its multilevel structure, its representational institutions should not be judged according to standards of national democracies.

This paper seeks to develop a more precise account of representation in the EU based on the theory of demoicracy or multilateral democracy, which is a normative account of democratic relationships between several democratic peoples.[2] It has been questioned whether demoicracy or

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[1] E.g. A. Føllesdal and S. Hix, 'Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik' (2006) 44(3) *JCMS: Journal of Common Market Studies*, 533–562.

[2] In the following I use the terms demoicracy and multilateral democracy synonymously, cf. F. Cheneval, *The Government of the Peoples: On The Idea and Principles of Multilateral Democracy* (Palgrave

multilateral democracy really constitutes a third way between intergovernmentalism and supranationalism and in particular whether the theory can provide institutional design recommendations that do not collapse into one or the other.[3] The paper contributes to the discussion about democracy in the European Union, moving the understanding of multilateral democracy forward by applying it to the concrete issues of institutional design regarding representation.

In particular, it addresses how the equality of individuals can be realised in EU representation while ensuring the mutual recognition of peoples. Multilateral democracy is sometimes mistaken as an intergovernmental account that gives priority to the peoples and neglects the importance of individual citizens. However, multilateral democracy requires the dual representation of citizens and peoples. This is particularly visible in Cheneval's theory that is based on an original position between citizens and peoples, arguing for two chambers to represent citizens and peoples equally.[4] Specifying this dual representation, I argue that multilateral democracy does not simply require two chambers but that representing individuals equally throughout Europe should not lead to disrespecting the democratic institutions and decisions of its peoples. Therefore, the 'balancing' of the equal supranational representation of individuals with the mutual recognition of peoples is the key issue that defines the institutional design of multilateral democracy.

The paper proceeds as follows: first, it outlines multilateral democracy's view on representation beyond the state and explains why multilateral democracy requires dual representation of its member peoples as well as of all individual citizens. Second, it identifies and discusses five institutional principles that are essential to the normative position of multilateral democracy. The third and fourth section address a number of concrete issues of institutional reform for the EU that demonstrate the importance of contained representation of individuals for multilateral democracy and illustrate its application in practice. While Section 3 focuses on the organisation of the representation of individuals in a supranational parliament, Section 4 looks at the representation of peoples through their democratic institutions.

Macmillan, 2011); F. Cheneval and F. Schimmelfennig, 'The Case for Demoicracy in the European Union' (2013) 51(2) *JCMS: Journal of Common Market Studies*, 334–50; F. Cheneval, S. Lavenex and F. Schimmelfennig, 'Demoi-Cracy in the European Union: Principles, Institutions, Policies' (2015) 22(1) *Journal of European Public Policy*, 1–18; J. Bohman, *Democracy across Borders: From Dêmos to Dêmoi* (MIT Press, 2007); K. Nicolaïdis, 'The New Constitution as European "Demoi-Cracy"?' (2004) 7(1) *Critical Review of International Social and Political Philosophy*, 76–93; K. Nicolaïdis, 'European Demoicracy and Its Crisis' (2013) 51(2) *JCMS: Journal of Common Market Studies*, 351–369.

[3] M. Ronzoni, 'The European Union as a Demoicracy: Really a Third Way?' (2017) 16(2) *European Journal of Political Theory*, 210–34.

[4] Cheneval, above, n. 3, at 144 *et seq.*

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I. Multilateral Democracy's View on Representation

A. Representation beyond the State

Representation as one of the main institutional features of modern democracy is essential to political legitimacy. However, as representation always produces hierarchies, it also poses a challenge to equality. Therefore, the relationship between democracy and representation is not without difficulties. On the one hand, democratic representation is based on the equal political voting rights of all citizens, which ensures the formal equality fundamental to democracy. On the other hand, the election process creates a gap between representatives and citizens, turning the latter into passive observers who are excluded from deliberative institutions.[5] This means that democracy seeks to institutionalise equality through equal voting rights; however, rather than generating equal political power, it merely equalises the power in the allocation of political power.[6] Representation establishes a vertical element of democracy that does not generate equality, but should establish two main elements: responsiveness toward the electorate, i.e. accountability, and quality in leadership through selection by merit.[7] Therefore, the vertical differences in political power that are constitutive for representation are not necessarily undemocratic.

In general, representation means that someone stands for or acts on another's behalf.[8] This is potentially problematic from the point of view of not only equality but also of autonomy. To ensure the autonomy of those represented, the criteria of legitimate representation are therefore essential. Representation is however itself a part of the political process in which interests are formed and clarified. This means that political interests are developed through public deliberation and do not exist as such prior to the political process. In other words, the political will cannot be represented but only temporary political judgements.[9] Therefore, political parties and movements are not only important for elections, but also for the informal aspects of participation to ensure citizens' influence. Democratic representation can then be understood as a dynamic process between moments of authorisation and accountability.[10]

Representation beyond the state faces even more challenges. In a multilevel system such as the EU, this question concerns not only individuals and groups within a state but also states themselves.

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[5] N. Urbinati, 'Representative Democracy and Its Critics' in Sonia Alonso, John Keane and Wolfgang Merkel (eds), *The Future of Representative Democracy* (Cambridge University Press, 2011), 23–49.

[6] E.g. A. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford University Press, 2004) at 250.

[7] G. Sartori, *Democratic Theory* (Greenwood Press, 1973).

[8] H.F. Pitkin, *The Concept of Representation* (University of California Press, 1967) at 38 *et seq*.

[9] Urbinati, above, n. 6, at 26.

[10] I.M. Young, *Inclusion and Democracy* (Oxford University Press, 2000) at 129.

It is unclear who should be represented and, if states should be represented, how they should be weighted. *Descriptive representation* as 'standing for' based on shared characteristics of the representatives and the represented, is relevant for this discussion as far as certain characteristics are included as requirement in the formal institutions, for example in proportional representation. The question is of course what the relevant characteristics are that need to be represented, e.g. language, gender, nationality or interests? Descriptive representation can be an important means for disadvantaged groups;[11] however, if the institutional framework specifies a characteristic to be represented, it thereby excludes others.[12] Regarding representation beyond the state, Gould argues, that each state should be duly represented.[13] However, this condition leads us back to the heart of the issue: it remains unclear what 'due representation' means. Should each state have one vote or should they be distributed in accordance with the number of citizens they represent? In a multilevel system, the question of the appropriate constituencies and what weight should be attributed to them is essential for the design of the representative institutions.[14]

B.   *Representation of Peoples and Individuals*

From an intergovernmental perspective that understands the EU as a particular, international organization, the choice for the relevant unit of representation seems obvious: it should be the states that have agreed to form the institution in the first place. This would mean that states should be represented either equally, one state one vote, or according to some weighted value for every state. Multilateral democracy as defended in this paper is based on the autonomy of persons in the sense of personal and political autonomy that is mutually realised through individual rights and collective self-determination.[15] From this perspective, the intergovernmental way of representation disregards two normatively important issues: first, the transnational interests of individuals and their interests in the system as a whole, which are not represented sufficiently by their respective states, should

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[11] Cf. J. Mansbridge, 'Should Blacks Represent Blacks and Women Represent Women? A Contingent "Yes"' (1999) 61(3) *The Journal of Politics*, 628–57.

[12] Cf. I.M. Young, 'Deferring Group Representation' in Ian Shapiro and Will Kymlicka (eds), *Ethnicity and Group Rights* (New York University Press, 1997), 349–76.

[13] C.C. Gould, *Globalizing Democracy and Human Rights* (Cambridge University Press, 2004) at 164.

[14] On the international level, there is as second problem that has been called the representativeness problem, namely that non-democratic states cannot be understood to represent their citizens in international organisations e.g. T. Christiano, 'Democratic Legitimacy and International Institutions' in Samantha Besson and John Tasioulas (eds), *The Philosophy of International Law* (Oxford University Press, 2010), 119–38. This problem is not addressed in this paper as multilateral democracy presupposes a democratic membership structure.

[15] This relies a broadly Kantian constructivist concept of autonomy e.g. J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press, 1996) at 84 *et seq.*; R. Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (Columbia University Press, 2012) at 125–37.

also be taken into account.[16] Second, the normative value of peoples in multilateral democracy rests on their democratic constitution, which makes them a 'realm of justice'. The representation of peoples solely through their governments neglects the complexity of these constitutions and creates democratic deficits. The democratic performance of the executive in international institutions and the shift in power from the parliament to the executive are topics of great importance to multilateral democracy – topics that have indeed sparked intense discussions in the debate over the democratic deficit of the European Union. Multilateral democracy does not generally reject executives as representatives of peoples; however, it would regard the reduction of the democratic procedure to national executives alone as incomplete. Therefore, the representation of peoples should account for the whole spectrum of domestic representation and include the national legislative actors or institutionalised accountability mechanisms. In other words, peoples have to be represented as democracies.

Cheneval argues that just principles for this setting can be determined through a hypothetical original position that includes both citizen and state representatives, thereby merging Rawls's two levels of original positions.[17] In his understanding, principles of multilateral democracy would need to be agreeable to them behind a veil of ignorance. In other words, they would not know who they are and would be unaffected by imperatives of the day, power or politics. For the state representatives, this specifically means that they would not know how large their state is, how many citizens it has or how wealthy it is. The citizen representatives, on the other hand, would be ignorant of their state of origin and whether they are still residing within this state or somewhere else in the system. A similar point has been made by Jürgen Habermas and others arguing for dual *pouvoirs constituants* of states-peoples and the European citizenry.[18] This is largely compatible with the normative foundations of multilateral democracy. Multilateral democracy excludes the idea of a supranational demos but suggests other ways of thinking about the importance of individuals throughout the EU, either as a *demos of demoi* or in terms of openness and interconnectedness of peoples.[19] The most important difference is that multilateral democracy does not require that

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[16] Cheneval, above, n. 3.

[17] F. Cheneval, 'Multilateral Democracy: The "Original Position"' (2008) 39(1) *Journal of Social Philosophy*, 42–61; Cheneval, above, n. 3; J. Rawls, *The Law of Peoples* (Harvard University Press, 1999). See Wolthuis in this special issue for an alternative interpretation.

[18] E.g. J. Habermas, *The Crisis of the European Union: A Response* (Polity Press, 2012); J. Habermas, 'Democracy in Europe: Why the Development of the EU into a Transnational Democracy Is Necessary and How It Is Possible' (2015) 21(4) *European Law Journal*, 546–57; J. Habermas, *The Lure of Technocracy* (Polity Press, 2015); M. Patberg, 'Supranational Constitutional Politics and the Method of Rational Reconstruction' (2014) 40(6) *Philosophy & Social Criticism*, 501–21.

[19] S. Besson, 'Deliberative Demoi-Cracy in the European Union: Towards the Deterritorialization of Democracy' in Samantha Besson and José Luis Martí (eds), *Deliberative Democracy and its*

citizens oppose themselves as national and European citizens, but rather that they have to constantly integrate both their interests as nationals and as Europeans.[20] This has important consequences for the institutional design, in particular of the European Parliament, as will be discussed later.

Multilateral democracy addresses the problem of due representation in multilevel systems through dual representation of individuals and peoples in order to fairly represent citizens and peoples of small and large states.[21] This means that representation in multilateral democracy seeks to balance the interests of individuals and peoples through a representative body with two chambers as the basic representative structure. The key challenge for the institutional design of multilateral democracy lies in the reconciliation or 'balancing' of the equality of individuals and peoples. Evidently, the simple co-existence of two representative bodies is insufficient to guarantee this balancing; their competences (for example, in agenda-setting) need to be equal as well. For representation, this challenge concerns mainly the question how the equal, supranational representation of individuals is possible without giving the European majority the means to undermine the mutual recognition of peoples, in particular the collective self-determination of smaller peoples. This requires thinking beyond the strict dual representation in two chambers and rather taking into account how the equality of individuals and peoples is connected throughout the whole institutional framework.

II. Institutional Principles of Multilateral Democracy

What can multilateral democracy tell us about how the representative institutions should be designed? The general institutional requirement of multilateral representation is dual representation of individuals and peoples alike. In the following, I develop five more detailed institutional principles with regards to representation of individuals and peoples:

A. Creation and change of treaties by unanimous peoples' consent

B. Equality of individuals through a directly elected body

C. Representation of peoples through domestic democratic institutions

D. Equality of peoples within their representative body

E. Equal representation of individuals and peoples

Discontents (Ashgate, 2006), 181–214; F. Cheneval and K. Nicolaidis, 'The Social Construction of Demoicracy in the European Union' (2017) 16(2) *European Journal of Political Theory*, 235–60.

[20] Cheneval and Nicolaidis, above, n. 20, at 10.

[21] Cheneval, above, n. 3, at 144.

Each of these principles is elaborated below. It should, however, be kept in mind that multilateral democracy allows for a range of acceptable designs, since there are several institutional designs capable of putting a certain principle into practice.

A.   Creation and Change of Treaties by Unanimous Peoples' Consent

Multilateral democracy as a voluntary association of democratic states is based on peoples' consent to participate. In contrast to cosmopolitan approaches, multilateral democracy also regards democratic states as relevant to individual political self-determination, meaning the latter cannot be forced into a union. The fact that the peoples enter into the multilateral democracy willingly and already as democratically constituted means that they will not agree to an institutional setting which can be subjected to fundamental changes without their consent. Essentially, this fundamental veto regarding entry, treaty changes and the option to exit guarantees the sovereignty of the peoples. Their sovereignty should not be overwritten as it is based on democratic decision-making in the individual states, and therefore the condition for collective autonomy.

In multilateral democracy the procedures to create or change institutions of multilateral democracy require the unanimous agreement of peoples.[22] This implies that each Member State should have a veto concerning the admission to the union and changes to the treaties, however not regarding secondary legislation.[23] To change the principle from unanimity to, for instance, double majority voting would require the unanimous agreement of all peoples. However, multilateral democracy does not mean that members get everything they want (integration relies on compromises and package deals) or that they can pick and choose (Europe à la carte); but only that they can choose to exit if they do not like the overall agreement. At the same time, multilateral democracy should be careful not to institutionalise this veto right too strictly. If a people itself decides that it would prefer to be represented in a different way, multilateral democracy could also overcome this state-based representation. The normative aim of multilateral democracy is to ensure autonomy and the democratic institutions necessary for it. This is important as it means that multilateral democracy is open to transformation and does not just freeze the status quo.[24]

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[22] For a different approach that argues, the *pouvoir constituant mixte* should be in charge of EU constitutional politics, see Patberg in this special issue.

[23] Cheneval distinguishes between treaty changes and changes within previously agreed upon competences, see Cheneval, above, n. 3. cf. Nicolaïdis, 'European Demoicracy and Its Crisis', above, n. 3, at 363.

[24] Cheneval and Schimmelfennig, above, n. 3, at 341. For a different opinion see Nicolaïdis, 'The New Constitution as European "Demoi-Cracy"?', above, n. 3.

B. Equality of Individuals through a Directly Elected Body

The equality of individuals in multilateral democracy is based on the understanding of individuals as the fundamental source of moral concern. According to this account, their interests are not restricted to a closed political order, as in Rawls's theory.[25] As all Member States in a multilateral democracy are democratic themselves, they are fundamentally based on promoting the interests of their citizens. By entering the multilateral democracy and accepting other peoples as equals, they also have to accept the members of the other peoples as fundamentally equal. Therefore, multilateral democracy works towards the expansion of equal individual rights. The equality of individuals is reflected in the principle of *equal representation of citizens*. Now, how can equal representation and non-discrimination be realised in the representative system?

In order to establish dual representation of individuals and peoples, the equal representation of individuals within the whole system of multilateral democracy requires all citizens to have equal voting rights for the 'chamber' representing them. The equality of individuals has to be institutionalised by a body of representation that is elected through equal, direct votes of citizens. The argument for a chamber of direct representation of individuals follows from the assumption that individuals can have other interests in the overall system than they do in the domestic system. This design proposal diverts away from the intergovernmental approach but also differs from cosmopolitan approaches because the chamber does not replace indirect representation mechanisms through national governments but rather complements them. Direct election creates incentives for alliances that disregard national borders because representatives come to Brussels not as statesmen but as party politicians.

C. Representation of Peoples through Domestic Democratic Institutions

According to multilateral democracy, it is not governments who are the normative relevant actors but peoples and individuals. However, this is not to say that governments are in general an unacceptable form of representation. If a people has agreed to join a multilateral democracy, the government can act on its behalf. This is legitimate because the Member States of a multilateral democracy are all democratic. The governments are likely to represent their citizens appropriately; however, to guarantee this, the government's behaviour needs to be connected to the national institutions of representative democracy. In comparison to cosmopolitan approaches, multilateral democracy requires only an indirect chain of representation. In contrast to intergovernmental approaches, the underlying argument is not the need for a representation of state interests as such but the representation of peoples' domestic interests. Multilateral democracy therefore requires

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[25] J. Rawls, *A Theory of Justice* (Belknap Press of Harvard University Press, 1971).

peoples' representatives to be more broadly connected to their domestic democratic institutions and not effected through the executive alone. In particular, this implies that national deliberation, but also national parliaments or other domestic institutions for representation, should be taken into account for the representation of peoples. This could take the form of mandates for the executive or direct involvement of the domestic institutions. This is of particular importance if we consider representation as a dynamic process, which requires political opinion formation through public discourse and institutions such as media and political parties.[26]

D. Equality of Peoples within Their Representative Body

Multilateral democracy is based on the mutual recognition of national democratic systems with their constitutional differences.[27] This means that all peoples should see each other as equals. The equality of peoples should be secured within a second representative chamber. Furthermore, in multilateral democracy the equality between peoples cannot be realised only through formal equality within the chamber that represents the peoples but requires transnational relationships to generate mutual opening and respect.

In Cheneval's reading the equality of peoples is presupposed as a fairness condition of the original position.[28] I suggest that recognition of other peoples and their democratic institutions is in fact based on an extended recognition of the autonomy of persons. Individual autonomy always needs to be thought as interpersonal, and therefore requiring political autonomy for its realization. The democratic and legal institutions of the peoples are in this sense the expression and condition for political autonomy. Therefore, the respect of autonomy between individuals leads to the demand for mutual recognition of peoples as the institutions to realize political autonomy.

Multilateral democracy seeks to promote political autonomy by establishing a rule-based system and common institutions between peoples. Multilateral democracy is a system that establishes the equality of peoples and mutual recognition between them. In negative terms, it is restricting the capacity to disregard or arbitrarily interfere with the democratic processes of others. This has also been captured in terms of securing non-domination.[29] The violation of mutual recognition is highly

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[26] Cf. R. Bellamy and D. Castiglione, 'Three Models of Democracy, Political Community and Representation in the EU' (2013) 20(2) *Journal of European Public Policy*, 206–23.

[27] Cf. J.H.H. Weiler, *The Constitution of Europe: 'Do the New Clothes Have an Emperor?' And Other Essays on European Integration* (Cambridge University Press, 1999); 'Federalism Without Constitutionalism: Europe's Sonderweg' in Kalypso Nicolaïdis and Robert Howse (eds), *The Federal Vision: Legitimacy and Levels of Governance in the US and EU* (Oxford University Press, 2001), 54–70.

[28] Cheneval, above, n. 3, at 132.

[29] e.g. Nicolaïdis, 'European Demoicracy and Its Crisis', above, n. 3, at 358.

problematic because it means that the democratic institutions of other peoples are not respected. This is another form of disrespecting the citizens of other peoples as free and equals. The global interconnectedness and differences in states power lead to the capacity to unchecked interference with domestic, democratic decision-making. Therefore, institutions such as multilateral democracy that subject this capacity to the equal control of peoples are necessary to ensure autonomy in the form of self-determination.

E.   *Equal Representation of Individuals and Peoples*

Multilateral democracy is generally sensitive to the equality of individuals and to claims to popular sovereignty. It seeks to manage the realm where the two may collide, through what I have called balancing. This, however, is not a question of replacing one or the other. The dual design of the representation institutions consists of universal representation of individuals on the one hand and governmental representation of peoples on the other, both holding equal legislative right. For the two bodies of representation to have equal legislative rights, a procedural link between the two is needed to secure balanced decisions.

Nevertheless, tension can arise between the equality of peoples and their sovereignty. This tension becomes evident in the lack of coordination in the constitutional differences regarding the revision of the treaties. The constitutional differences, at the core of peoples' sovereignty, can in several ways be problematic for the equality of citizens and peoples. For example, the fact that referenda are neither equally demanded in all EU Member States nor held at the same time produces inequality and possible bargaining advantages for certain states over others.[30] In terms of institutional design, the question is to what extent multilateral democracy requires institutional uniformity at the national level and to what extent diversity is acceptable. Based on the mutual recognition of peoples, the limits on the extent to which constitutional differences should be respected are based on the equality principle itself. Therefore, such differences should only be adapted if they create exceedingly unfair advantages between the peoples or the individuals of different countries at the European level that are not mutually justifiable.

F.   *Conclusion*

How are these design principles realised in the EU? The existing literature shows that the EU's system of representation meets basic requirements of multilateral democracy.[31] It combines avenues

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[30] F. Cheneval, '"Caminante, No Hay Camino, Se Hace Camino Al Andar": EU Citizenship, Direct Democracy and Treaty Ratification' (2007) 13(5) *European Law Journal*, 647–63. See also Lacey in this special issue.

[31] Cheneval and Schimmelfennig, above, n. 3.

for individual and collective representation. The structure of democratic representation in the EU polity is different from the one in typical representative democracies. Whereas typical national parliamentary democracies are characterised by a singular chain of delegation from voters to parliaments, governments and the executive bureaucracy,[32] European integration breaks the singularity of the chain in two ways: it splits the chain at the origin as voters obtain access to a new line of delegation via the EP and it multiplies the singular chain as several Member States are integrated into a new system of multilevel, multi-centric governance.[33]

Furthermore, while representation via the EP used to be inconsequential for most of the EU's history (due to a lack of institutional competences), the EP's competences have grown to encompass equal legislative rights with the Council of Ministers in almost all areas of EU competence.[34] With the Lisbon Treaty, the co-decision procedure, which gives the EP equal rights, has officially become the 'ordinary legislative procedure'. Legislative agenda-setting powers, however, remain firmly in the hands of the EU's executive bureaucracy, the European Commission. The treaties prescribe accountability on the part of governments in the Council towards national parliaments and voters. However, they do not interfere with the internal organisation of the Member States. Moreover, Member States remain the 'masters of the treaties' and EU membership remains voluntary. In these respects, the EU has developed structures of representation that correspond to the main requirements of multilateral democracy.

Addressing the implementation of the more specific design implications of multilateral democracy, I focus on another issue of the EU's system of representation that the literature has not addressed in detail, namely, how the equality of individuals and peoples within their respective chambers can be realised. The main concern is how the equal supranational representation of individuals is possible while guaranteeing the mutual recognition of peoples. I argue that the Parliament and the Council might not follow strict horizontal equality principles, but already include balancing within each institution. These considerations are now examined for the representation of individuals (Section III) and peoples (Section IV) in turn.

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[32] K. Strøm, 'Delegation and Accountability in Parliamentary Democracies' (2000) 37(3) *European Journal of Political Research*, 261–290.

[33] cf. G. Marks, L. Hooghe and K. Blank, 'European Integration from the 1980s: State-Centric v. Multi-Level Governance' (1996) 34(3) *JCMS: Journal of Common Market Studies*, 341–378; T. Raunio, 'National Parliaments and European Integration: What We Know and Agenda for Future Research' (2009) 15(4) *The Journal of Legislative Studies*, 317–334, at 322–25.

[34] B. Rittberger, *Building Europe's Parliament: Democratic Representation Beyond the Nation State* (Oxford University Press, 2005); C. Roederer-Rynning and F. Schimmelfennig, 'Bringing Codecision to Agriculture: A Hard Case of Parliamentarization' (2012) 19(7) *Journal of European Public Policy*, 951–68.

III. Constrained Representation in the Supranational Parliament

A. *Degressive proportionality in the European Parliament*

As multilateral democracy seeks to establish the equality of citizens through representation in the Parliament; this could be understood as the demand for every citizen to have one vote in a Europe-wide election of the Parliament. However, as multilateral democracy is explicitly based on several demoi and does not presuppose or promote a supranational demos, this seems to conflict with its transnational core and therefore requires further discussion. From the transnational perspective, one can argue that 'above all the lack of a European demos means that European citizens will not and should not accept to be bound by a majority of Europeans'.[35] In the current election procedure, each country fills a quota of MEPs using national electoral procedures and common principles. The quotas are defined by a decision of the European Council by unanimity, on the initiative and with the consent of the European Parliament within the constraints of Article 14.2 TEU.[36] The quotas follow the idea of degressive proportionality, i.e. smaller countries get more seats than their population suggests and larger ones fewer. Is the restriction of equality through national quotas and national lists acceptable for multilateral democracy? I suggest that this should be understood as a form of 'bounded' representation of individuals, that restricts the potential to undermine mutual recognition and is indeed called for by the principles of multilateral democracy because it integrates the representation of individuals and peoples in the institutional design.

Taking into account the critique of EU representation put forth by Bellamy and Castiglione, i.e. that the European Parliament representing the European people as a whole is problematic and that national representation should be strengthened, the elections of the EP on different national lists may in fact be appropriate.[37] According to Cheneval, the parliament should only possess limited legislative capacity in order to curb supranational domination, which is in his view undemocratic because it undermines the principle of self-government.[38] This limitation of direct participation can be justified if we understand democracy to be based not only on majority voting but also on basic rights. If the national interests result in the constitution of persistent minorities, an unrestricted majority system is not appropriate, because citizens of smaller states would be subjected to on-going domination by the majority. Therefore, even though national quotas violate strict equality,

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[35] Nicolaïdis, 'European Demoicracy and Its Crisis', above, n. 3, at 356.

[36] For the decision in force see: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013D0312

[37] R. Bellamy and D. Castiglione, 'Legitimizing the Euro-"Polity" and Its "Regime": The Normative Turn in EU Studies' (2003) 2(1) *European Journal of Political Theory*, 7–34.

[38] Cheneval, above, n. 3, at 147.

they are acceptable for multilateral democracy. Nevertheless, this constitutes a restriction of the equality principle of individuals.

This is only acceptable if fundamental individual rights are protected through domestic democratic structures and multilevel citizenship. While multilateral democracy tolerates the restriction of individual equality in its representative structures, basic rights should not be restricted in that way and should provide the foundation on which representation is possible in the first place. This relates to the question how equality of peoples, mutual recognition and non-domination relate to each other. The equality of peoples aims for the equal status of peoples in the institutions, primarily realised through equal formal rights. As non-domination is a minimal requirement for equality, this can also restrict the requirement of strict formal equality.

The degressive proportionality of elections through the member-states is, on the one hand, a device of descriptive representation that may represent a problematic restriction of identification with the national level. On the other hand, the value of national quotas, for practical reasons, should not be neglected. First, they guarantee the citizens' ability to communicate with their representatives in their own language, which might not be the case without national lists. As communication is in fact one of the most important features to make representation possible as a dynamic political process, this should not be underestimated. Second, as part of a non-ideal theory, the maximum size allowing a parliament to remain operational is limited. If under strict proportionality the citizens of the smallest state should at least be able to elect one representative, this would lead to a non-functional size of the EP.[39] Overall, one can conclude that the current election procedure of the EP leads to the over-representation of citizens of small states. However, in order for these states to be protected from supranational domination, this is acceptable for multilateral democracy. In a way, this already demonstrates some form of balancing in terms of the equality of individuals and peoples within this chamber. Nevertheless, it needs to be considered whether this still balances out with the representation of peoples.

To be clear, from the perspective of multilateral democracy what degressive proportionality protects is the democratically formed wills of the peoples and in this sense their political autonomy. Habermas has made a similar argument that the allocation of seats is to ensure 'member states' democratic advocacy of their interests'.[40] Achenbach has criticised this view because it allegedly

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[39] In the current EP, consisting of 751 members, Germany has 96 and Malta 6 seats. Under strict proportionality, Germany would have 190 times more seats than Malta. This means 190 seats if Malta only has one, or 1140 if Malta has the 6 seats it currently holds. This shows that strict proportionality is not only impracticable for the EP, but also unacceptable for Malta.

[40] J. Habermas, 'Citizen and State Equality in a Supranational Political Community: Degressive Proportionality and the Pouvoir Constituant Mixte' (2017) 55(2) *JCMS: Journal of Common Market Studies*, 171–82, at 179.

makes the EP into a forum for the representation of national interests which it neither does nor is supposed to do.[41] Rather the EP should be understood as promoting an open-ended process of transnationalisation. However, Habermas understands the nation-states at the guarantors of the justice and freedom and argues that their citizens therefore have an interest in their protection against intrusion and encroachment by supranational institutions. From the perspective of multilateral democracy, it is important that the normative weight is not rooted in national interests *per se* but in the due respect for domestic, democratic decision-making. This means that it is not necessarily problematic if, in matters that particularly affect national interests, MEPs also represent these.[42] However, the decision whether priority should be given to the domestic or multilateral interests is similar to the case of individual and collective ones and should be made on the basis of political reason giving, relying on criteria of generality and reciprocity. In that respect, von Achenbach is right in emphasising the transnational perspective as the relevant one as it seeks to connect the different domestic, democratic perspectives. In order for this to be possible degressive proportionality is however required.

B.   A Europe-wide Subchamber of the EU Parliament

The existence of national quotas as such has rarely been disputed despite the fact that they conflict with the strict equality of individual votes. However, the EP has for some time debated whether to elect a sub-set of MEPs from a pan-European constituency in which every EU citizen has a vote regardless of nationality. This idea has been proposed by an EP initiative report (2009/2134(INI)) under the rapporteurship of Andrew Duff and, even though the report has never been adopted, it is experiencing a revival in the discussion about what to do with the 73 EP seats that will become available after Brexit.

Would such an additional Europe-wide chamber within the parliament relax the restriction of individual equality contained within the current election procedure? In general, this seems to be the case. The question remains, however, whether this would produce another domination problem or other difficulties. First of all, as this part of the parliament would only include a small number of MEPs out of the current 751 of the whole Parliament, it could hardly lead to supranational domination, yet it could form an explicit representation of transnational European interests. However, an inherent downside is that this process would require two votes for each citizen and different voting lists, rendering the election procedure more complicated. This does, however, not

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[41] J. von Achenbach, 'The European Parliament as a Forum of National Interest? A Transnationalist Critique of Jürgen Habermas' Reconstruction of Degressive Proportionality' (2017) 55(2) *JCMS: Journal of Common Market Studies*, 193–202.

[42] Cf. Habermas, 'Citizen and State Equality in a Supranational Political Community', above, n. 41, at 179.

make this impossible, as for example Germany uses such a system. On the other hand, such a Europe-wide sub-chamber could foster transnational discourse and European parties because it would require the candidates to gain Europe-wide support, which is unnecessary for national lists. Such a transnational discourse that addresses issues that are relevant across borders would contribute to a progressive, transnational opening and reinforce mutual recognition – two of the main aims of multilateral democracy. In sum, multilateral democracy supports the reform proposal for a Europe-wide sub-chamber of the Parliament.

C.   Uniform Election Procedure

Another issue concerning the electoral procedure of the EP is that the Member States should adopt a uniform electoral procedure. Even though the EP currently does not actively pursue the idea of a uniform electoral system, this proposal has been around since the early days of integration. Already the Treaty of Rome (Article 138(3)) envisaged that '[t]he Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States'. While the Parliament subsequently debated and proposed various ideas, it nevertheless failed due to disputes within the chamber as well as the requirements of unanimous Council support and domestic ratification.[43] The Treaty of Amsterdam introduced the possibility to agree on common principles rather than a uniform electoral procedure. In 2002, the Council decided (Council Decision 2002/772/EC, Euratom) that all Member States would apply proportional representation but left other choices open, such as the thresholds for obtaining any seats; whether voters can prefer particular candidates; the magnitude of electoral districts; and the exact election date. Indeed, the electoral procedures currently in practice display considerable variation.[44] Consequently, voters in different countries encounter different electoral environments which may correspond to different electoral incentives for candidates (e.g. more or less incentives to build a personal vote).[45]

The fundamental question is whether it is appropriate for the EU to regulate the electoral procedures for EP elections above and beyond the currently existing agreement on proportional representation. From a multilateral democratic perspective, a uniform electoral system should be established, since differing electoral procedures may result in inequality across the system. This reform would not affect the domestic election procedures in the EU's Member States but only the one for the EP. Because there are no concerns of domination of peoples involved and the

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[43] E.g. D. Millar, 'A Uniform Electoral Procedure for European Elections' (1990) 9(1) *Electoral Studies*, 37–44.

[44] D.M. Farrell and R. Scully, 'The European Parliament: One Parliament, Several Modes of Political Representation on the Ground?' (2010) 17(1) *Journal of European Public Policy*, 36–54.

[45] Ibid.

standardisation can be justified on general and reciprocal terms, the equality of citizens is the leading principle and a uniform electoral should be implemented.

IV. The Democratic Calibration of the Representation of Peoples

A. Reinforcing the National, Democratic Chain of Delegation

As argued above in the third institutional design principle, representatives of peoples should be rooted in democratic processes. This addresses the question of who should represent the people. The requirement of multilateral democracy for peoples' representatives to be connected to domestic democratic processes of preference formation is uncontroversial. However, is this currently reflected in the EU? And if not, would it be possible to improve the situation? To answer these questions, we can consider the main steps in the democratic delegation chain from voters to representatives in EU decision-making. The general message is close to Dahl's view: international policy-making exacerbates the demands that have to be met for effective citizen participation beyond existing demands – which may *already* be too high.[46]

For citizens, European integration makes the effective use of their vote difficult. One facet of this problem is well-established: voters lack information on, and often interest in, EU politics, and therefore do find it difficult to cast their vote for a party that promises to pursue desirable policy at the EU level.[47] Moreover, if voters make choices based on their left-right preferences, the parties they choose might also pursue EU-level policies that correspond to these preferences, even if voters do not base their choice on information about EU level policy-making.[48] There are two less obvious concerns. First, European integration may lead to the emergence of an additional conflict dimension (pro-anti integration) in domestic politics. If, as part of the literature argues, this dimension aligns, is subsumed by or transforms existing conflicts, it does not necessarily enhance the complexity of political contestation in the Member States.[49] On the other hand, if European integration adds a genuinely new dimension, it creates a dimensionality problem. One simple consequence could be the following: if voters use the national election to express their integration preferences, they lose

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[46] R.A. Dahl, 'A Democratic Dilemma: System Effectiveness versus Citizen Participation' (1994) 109(1) *Political Science Quarterly*, 23–34.

[47] E.g. C.J. Anderson, 'When in Doubt, Use Proxies: Attitudes toward Domestic Politics and Support for European Integration' (1998) 31(5) *Comparative Political Studies*, 569–601.

[48] P. Mair and J. Thomassen, 'Political Representation and Government in the European Union' (2010) 17(1) *Journal of European Public Policy*, 20–35, at 27–30.

[49] E.g. L. Hooghe, G. Marks and C.J. Wilson, 'Does Left/Right Structure Party Positions on European Integration?' (2002) 35(8) *Comparative Political Studies*, 965–89; H. Kriesi et al, 'Globalization and the Transformation of the National Political Space: Six European Countries Compared' (2006) 45(6) *European Journal of Political Research*, 921–56.

the ability to affect national left-right politics and vice versa.[50] As a solution for this issue, Budge for instance, recommends the use of direct democratic procedures for questions that are not aligned with the dominant dimension of political contestation, to isolate them from the elections.[51] However, direct democratic means should be used very carefully to guarantee the democratic quality; specific concerns should be, on the one hand, the quality of the public discussion in counties that do not use direct democracy regularly and, on the other hand, they should have an independent basis in the constitution rather than be controlled by the government as plebiscites.

At the level of national parliaments, the conditions for democratic delegation have improved. The standard view used to be that integration reduced the ability of parliamentary parties to monitor and participate in the government's EU-level policy-making. However, the majority parties elect that government and can be relatively confident that it shares their views on the most important dimensions of political contestation (esp. the left-right dimension). Problems exist in some countries regarding the integration dimension as certain mainstream government parties are internally divided and parliamentarians come under the pressure of Eurosceptic citizens. We know, however, that under these conditions, parliamentarians have created stronger oversight procedures to monitor governmental conduct in EU affairs – though the effectiveness of these procedures, however, is still open to debate.[52] One should also keep in mind that deficits in parliamentary participation in EU affairs reflect significant long-standing parliamentary deficits in domestic politics.[53]

Scholars of domestic party politics have observed that the 'parties matter' hypothesis has come under pressure as governments respond to real or perceived economic imperatives, security concerns or priorities of the respective ministries.[54] Studies of EU decision-making have repeatedly found that the positions governments take in negotiations reflect economic structures, contributions to the EU budget or other structural conditions rather than party ideology.[55] Furthermore, there is

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[50] J. Thomassen, 'In Conclusion: The Legitimacy of the European Union after Enlargement' in Jacques Thomassen (ed), *The Legitimacy of the European Union after Enlargement* (Oxford University Press, 2009), 225–44.

[51] I. Budge, 'Direct and Representative Democracy: Are They Necessarily Opposed?' (2006) 42(1) *Representation*, 1–12.

[52] T. Winzen, 'European Integration and National Parliamentary Oversight Institutions' (2013) 14(2) *European Union Politics*, 297–323; Raunio, above, n. 34.

[53] T. Raunio and S. Hix, 'Backbenchers Learn to Fight Back: European Integration and Parliamentary Government' (2000) 15(4) *The Journal of Legislative Studies*, 317–34; D.G. Dimitrakopoulos, 'Incrementalism and Path Dependence: European Integration and Institutional Change in National Parliaments' (2001) 39 *JCMS: Journal of Common Market Studies*, 405–22.

[54] P. Mair, 'Political Opposition and the European Union' (2007) 42(1) *Government and Opposition*, 1–17. The fact that these conditions also reflect ideologies should however not be neglected.

[55] e.g. R. Thomson, *Resolving Controversy in the European Union* (Cambridge University Press, 2011).

reason to believe that parties matter less in EU than in domestic policy-making. Parties are less well-organised at the EU level, Council of Ministers negotiations are run by diplomats and civil servants most of the time, and ministers come to Brussels only irregularly, being mainly concerned with domestic politics.[56] This observation that party ideology does not matter is a problem, as it indicates that government activities are disconnected from the domestic political process.

Perhaps surprisingly given the widespread belief that integration empowers national governments, they also constitute a weak element in the chain. More precisely, if we think of the government as an amalgam of the party executive and the executive bureaucracy,[57] it seems that party ideology does not affect government policy at the EU level. Party ideology, however, is the executive characteristic that voters and parliamentarians can most easily influence through their democratic rights.

The overview thus shows that all EU-related delegation problems have corresponding domestic deficits. Reforms of EU institutions and politics may help to address these problems, yet only domestic democratic improvements are likely to resolve deficits in the representation of peoples in the EU's multilateral system. Moreover, increased parliamentary attention might strengthen the impact of party ideology on EU policy-making, forcing ministers to adhere to party policy. Finally, from the perspective of multilateral democracy, it would be important for peoples' representatives and the policies that they promote to actually respond to variations in the outcomes of domestic preference formation processes. This may require the closer involvement of the government party's political personnel in all phases of Council negotiations. Alternatively, governments could appoint junior ministers in all areas of the Council's activity to stay in Brussels for the government's term of office. This would add a permanent political presence of the peoples at the EU level, alongside its current, predominantly diplomatic, permanent presence.

B. Equality of Peoples in the Council

Since the EU's system of representation is both multilevel *and* multi-centric, the representation of peoples has not only a vertical (preference formation and aggregation) but also a horizontal dimension. The horizontal dimension concerns the interaction of peoples. Multilateral democracy argues that the horizontal interaction of peoples, as far as policy choices are concerned, should be built primarily on the 'horizontal sharing and transfer of sovereignty' and not only on supranational

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[56] e.g. F.M. Häge, 'Who Decides in the Council of the European Union' (2008) 46(3) *JCMS: Journal of Common Market Studies*, 533–58.

[57] J. Blondel, 'Introduction' in Jean Blondel and Maurizio Cotta (eds), *The Nature of Party Government* (Palgrave, 2000), 1–20.

institutions and regulation.[58] In how far do the processes of the EU realise the equality of peoples specifically in the Council?

The voluntariness of multilateral democracy is the guarantee for a minimum of control yet it cannot fully overcome problems of background justice, apparent on the international level.[59] The treaties and secondary law that are then produced limit the options of the member peoples to dominate each other through shared rules. For the relations within the Council, however, this does not mean that there is no bargaining; rather, that it provides a common framework for interaction. Since equal formal rights in rule-setting are guaranteed, possible bargaining advantages caused by economic power or the parties' negotiation positions in relation to the status quo do not in and of themselves represent cases of arbitrary power. However, enduring structural inequalities that do not vary across issues or over time are problematic in the same sense as are persistent minorities.[60]

In general, larger peoples have bargaining advantages because they have more economic power but also because they can invest more resources in gathering and processing information and in being present at the decision-making institution. Bargaining power in this sense can hardly be eliminated. However, in the Council, the votes of the peoples are generally weighed equally but taking to some degree into account the size of their population. The regulations in the Treaty of Lisbon changed the decision-making procedure in the Council (in most cases) into a dual majority system with qualified majority covering at least 55% of the member states, representing at least 65% of the population. It also includes the option of blocking-minorities, ensuring a minimum of non-domination for smaller states.[61] This procedure follows the ideal of multilateral democracy as it assigns a vote to each people. The fact that the decision-making procedure does, however, not follow strict equality shows that not only the Parliament but also the Council already realises the balancing of peoples and individuals within its chamber.

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[58] Nicolaïdis, 'The New Constitution as European "Demoi-Cracy"?', above, n. 3, at 85; Cheneval, Lavenex and Schimmelfennig, above, n. 3.

[59] For a discussion of background injustice beyond the state see M. Ronzoni, 'The Global Order: A Case of Background Injustice? A Practice-Dependent Account' (2009) 37(3) *Philosophy & Public Affairs*, 229–56.

[60] Specifically, if they concern issues related to the effects of the whole system. Multilateral democracy does not want to equalise resources over the whole system; yet, if the multilateral democracy itself creates burdens – as could be argued, for example, in the case of the increased immigration that Italy has to cope with – these costs should be shared equally across the whole system.

[61] The Council even follows an informal rule that everyone's position should be taken into account, as it mostly takes its decisions under unanimity, cf. J. Lewis, 'The Janus Face of Brussels: Socialization and Everyday Decision Making in the European Union' (2005) 59(04) *International Organization*, 937–71; R. Thomson, 'Double versus Triple Majorities: Will the New Voting Rules in the Council of the European Union Make a Difference?' (2013) 36(6) *West European Politics*, 1221–38. However, this should not be over rated in terms of equality as the informality of this rule undermines its potential to restrict the capacity to disregard other.

V. Conclusion

Based on the theory of multilateral democracy this paper discussed the appropriate institutions for the representation of individuals and peoples and identified five specific institutional principles. First, the procedures to create or change institutions of multilateral democracy must be subject to unanimous agreement of peoples. Second, the equality of individuals has to be institutionalised by a body of representation that is connected to equal voting rights of citizens. Third, multilateral democracy requires the representation of peoples to be connected to domestic democratic institutions and not through the executive alone. Fourth, peoples should be represented as equals within their representative body. Fifth, equal representation of individuals and peoples has to be realised through two representative bodies with equal legislative rights.

Focusing on the equality of individuals one can conclude that multilateral democracy is fully compatible with degressive proportionality in the election of the EP as a transnational way of institutionalising the equality of individuals. However, it also supports the reform proposal for a Europe-wide sub-chamber within the Parliament and a uniform election procedure in all Member States. These are ways in which the equal representation of individuals can be realised, ensuring mutual respect for the democratic institutions of peoples as realisation of political autonomy. Multilateral democracy calls for such institutions, as it requires the integration of national and European interests.

Turning to the question of who represents the peoples, multilateral democracy demands the strengthening of domestic democratic institutions and the inclusion of representative institutions outside of the executive in the multilateral institutions in order to reflect the whole democratic process. To improve their integration in multilateral decision-making, I suggest that increased parliamentary attention and a closer involvement of the government party's political personnel in all phases of Council negotiations might improve compliance with party ideology on the EU level. The analysis of the EP and Council has shown that, at the institutional level, the equality of individuals and peoples plays an important role in each institution. Neither the formula for EP seats nor the voting procedure in the Council targets one or the other, but comprises elements of both, which is a justifiable institutionalisation of the multilateral democracy's representative requirements.