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Toward a normative theory of multilateral democracy: the original position and the principles

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Abstract: The normative theory of multilateral democratic integration starts within the context of liberal peoples engaged in the common realization of rights, freedoms, and life chances for their citizens while seeking to preserve self-government and popular sovereignty. The point argued in the paper is that the fair terms of multilateral democratic integration must be determined by an integrated original position of citizen and people representatives choosing basic principles of liberal multilateralism. The proposal to merge the two Rawlsian original positions offers a political solution to the contrast between rival conceptions of grand universalism and national particularism. After a general discussion of the wider problematic and the original position (1), I explain the concept and the reality of multilateral democratic integration (2). In part three, I justify why citizen and people representatives ought to be seen as participants of the original position of multilateral democratic integration. I then assess the rational motives of both types of representatives (4) and determine the veil of ignorance of the integrated original position (5). In section (6), the original position is applied to the test of several normative hypotheses *prima facie* considered as candidates for basic principles of multilateral democratic integration. These principles are not necessarily new, but they are principles which presumably apply to multilateral democratic integration as a specific political order and system of cooperation.

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Toward a Normative Theory of Multilateral Democracy: The Original Position and the Principles

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I. Conceptual Framework

I 1. Democracy and International Relations: Gradualism and Transformationalism

The questions whether international institutions are in need of legitimacy and democratization and how to eventually conceive such democratization emerge as central questions in contemporary world politics¹. Comparative pragmatic analysis leads some authors to the conclusion that most reproaches of “democratic deficit” in international politics are unwarranted or should be launched against the undemocratic member states, not against the intergovernmental organizations as such. This point is convincing in some aspects.² However, it does not sufficiently take into account that, within the international realm, multilateral organizations represent specific political orders or coordinated and interdependent executive government based on generalized principles of conduct.³ As such, multilateral organizations face specific legitimacy problems. To the extent that this post-national form of government relies on conflicting values and creates externalities that affect domains of national popular

¹ See e.g. Dahl 1999; Zürn 2000; Marks 2001; Keohane/Nye 2001; Keohane/Nye 2001a; Stein 2001; Cheneval 2002; Moravcsik 2005: 212; Woods 2001; 2003; 2005; 2006.

² See Moravcsik 2005.

³ See Ruggie 1993.

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sovereignty, the question how the citizens and the *demos* participate in this realm of politics becomes pressing, especially if national democracy and political autonomy of small and medium size states is to be preserved.⁴

The question of democratization of multilateral spheres of government can be understood according to a gradualist or a transformationalist conception. The gradualist conception designates a quasi identical reproduction of the normative structure of national democracy at ever higher levels, ultimately the global level.⁵ The transformationalist conception implies structural change with every step of vertical democratization beyond the nation-state. In this process, neither the composing units nor the overarching unit of government are assumed to simply reproduce the structure of nation-state democracy and nation-state legitimacy.⁶

Although complicated on the operational level of politics, the gradualist conception is theoretically less challenging than the transformationalist conception. It simply applies the theoretical elements of national democracy to supranational democracy. This apparent simplicity, however, conceals a basic normative problem. The structural reproduction of democracy on the supranational level implies the dissolution of the national unit of popular sovereignty and its reproduction on the level of the overarching unit (definite delegation of competence-competence of the People to the new overarching People and its member Peoples).

⁴ See Scharpf 1999.

⁵ See Held 1995.

⁶ See Bohman 2005.

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In most democratic countries, even in many EU member states, there is considerable national-democratic resistance against gradualist vertical democratization and delegation of sovereignty functions to supranational units. In normative theory, the debate about gradualist vertical democratization focuses on the reproducibility of “the People” on the supranational level. The denial of the possibility of such political engineering and a conception of “the People” tied to history, tradition, and cultural community are the reasons why some of the most pertinent arguments against gradualist vertical democratization can claim to be genuinely democratic.⁷

I consider the gradualist approach as less plausible than the transformationalist approach. The transposition of democracy from the city-state to the nation state implied a transformation from direct participatory democracy to representative democracy alongside with considerable horizontal and vertical institutional differentiation. Even if one does not agree on the content of Dahl’s conception of the third democratic transformation⁸, the transposition of democracy from the nation state to the multilateral realm implies most certainly a strong transformationalist element. In the second book of his *Politics*, already Aristotle has held against Plato that the polity is composed of elements with which it cannot be identified but which determine its structure as composites. According to Aristotle, one cannot, as does Plato, conceive of the polity as a human individual (soul) writ large. It is a composite of individuals, families, villages, etc.⁹ This holds true for multilateralism: The multilateral institution is composed of nation-states (all of which have different sub-national units of organization and particular civil society associations), but cannot simply be conceived as a nation-state writ large. The EU in its actual form, for instance, cannot be conceived as a nation-state writ large

⁷ See Scharpf 1999; Grimm 1995; Kielmansegg 1996; Greven 2000.

⁸ See Dahl 1989:13-33. 311-321.

⁹ See Aristotle

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but has to be conceived as a complex composite among which the nation-states are the most important and determining elements. This structural difference between nation-state and multilateral institution does not mean that all principles of multilateral democracy have to be original and different from the ones applied in national democracy. Representative democracy in the nation-state in many historical manifestations also realized elements of city-state democracy. The plausible assumption therefore is that there is continuity and transformation when democracy is tentatively realized in the multilateral realm. The main point of the transformationalist approach for normative theory is that principles of multilateral democracy have to be justified by a freestanding theory which is acceptable to all participating *demos* and citizens in a fair procedure. Multilateral democracy cannot be structured simply by applying principles of national democracy and national models of democracy to the multilateral realm.

I 2. Abstract Conceptions and Counterfactual Hypotheses

The justification of norms of legitimacy and democratic government of political organization as well as the evaluation of democracies relies on normative principles and on validity claims that are not directly deducible from facts (including factual consent or contract) and even less so from preferences about which there is deep political conflict. Factual consent or real contractual agreements are of course an important element of legitimacy, but as such they can be reached under unfair conditions and with illegitimate use of power and pressure. Therefore the structure of the procedure in which consent is reached is as important as the consent itself. Many illegitimate dictators have broad popular consent, but this consent is not reached in a fair procedure acceptable for all. Shared reasonable justification of basic political norms thus

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ultimately depends on a counterfactual thought experiment which tries to explore a common ground of acceptability when shared understanding on a less general and more “real” level of understanding breaks down, or when the real conditions of bargaining indicate unequal power relations so that the legitimating force of the agreement is highly questionable. This counterfactual exploration of reasonable acceptability of principles should not be confused with the invention of concrete political utopias. In the tradition of political thought, the thought experiment which explores the common ground of reasonable acceptability of political principles has been called the social contract. In this paper, I adopt the Rawlsian version of this tradition and I apply the analytical devices of “original position” and “veil of ignorance” to the problem of multilateral democratic integration. This will be explained in detail later. With a specially adapted use of these devices, I try to establish principles for a fair system of multilateral democracy.

I 3. Democratic Multilateralism as a Specific Political Order

Multilateral integration can be distinguished from domestic and international politics at large by the fact that it leads to coordination and cooperation among three or more sovereign states on the basis of generalized principles of conduct.¹⁰ On the institutional level, multilateral integration of states can be understood as the creation of interconnected structures of domestic, supranational and intergovernmental decision making procedures, regimes and organizations.¹¹ In the case of functional regimes, such as the IMF, NPT, or the Ottawa-Process of Banning of anti-personnel Landmines, the corresponding organization’s relatively simple institutional character derives from the necessities and preferences of the states with

¹⁰ See Ruggie 1993: 8-14; Caporaso 1993.

¹¹ Cheneval 2005: 333-358.

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regard to specific issues. The legitimacy of such regulatory, mostly single-issue agencies usually depends directly on a measurable output, such as the successful fight against international monetary crisis or inflation, the reduction of landmines or nuclear weapon heads, the reduction of poverty, the eradication of polio, etc.

At the other end of the spectrum of multilateral integration there are complex organizations which link several issues and are rule-based. As issue-linkage increases, output legitimacy is harder to measure by expert opinion only, and the weighing of output results in a context of competing values depends on preferences and interests which have to be filtered through participatory political procedures. The institutional structure of agency is no longer adequate and the organization needs institutional features adequate to its polity-like character. This political process implies more delegation to and more institutional differentiation within the multilateral organizations, as well as more linkage of different functional processes in deliberation and decision making.

The principles and rules of multilateral integration may be few and basic, such as the principle *pacta sunt servanda* of international law at large, the principle of reciprocity, the most-favored-nation principle of the GATT, GATS and TRIPS¹², or the principle of indivisibility in a system of collective security (e.g. NATO's "commitment clause", Washington Treaty, Art. 5). They may also be more far reaching and depending on complex institutional arrangements, such as the principle of direct effect of EU law, or the principle of non-discrimination according to nationality with regard to residence and freedom of movement for citizens of the EU (Art. 12 EC), or the principle of representation of citizens on the supranational decision making level (Art. 19 EC).

¹² MFN principle requires a country to grant any trading partner the same extent of treatment in terms of international commerce as it does to any other trading partners.

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This paper aims to provide a general normative framework for complex multilateral integration with broader issue linkage and rule-based character. The decisive criterion for inclusion in the concept of multilateral integration in general is that a regime or organization has to be based on at least one generalized principle of conduct. This principle has to be enacted as an independent source of rule-making and operational guidance within that specific field of multilateral cooperation. The reliance on generalized principles of conduct is the foundation for a rule-based organization leading to generalized anticipation of expectations, thereby creating the necessary conditions for vertical democratization to become necessary.

According to the ideal-type of multilateral integration so conceived, statepeoples carry out multilateral integration without forgoing their competence-competence. This feature keeps multilateral integration formally distinct from state-building in which sub-state institutions delegate and thereby loose there competence-competence, i.e. their veto power to basic constitutional changes.

The use of the term “integration” indicates that the paper tries to focus on compound and incremental conceptions of legitimacy and democracy, including different degrees and phases. The latter depend on the different issues and implied issue-linkages of particular fields of multilateral cooperation. Although issue-linkage (and therefore politics, including the domestic levels) is becoming gradually more important in organizations such as the WTO, it is neither assumed nor rejected that the different realms of multilateral integration are supposed to converge into a single polity (even the EU is still divided into different tracks of integration according to functional differentiation) or even a global polity. Instead of the idea of an “Endzweck” of ever deeper cosmopolitan union, heavily charged with a deterministic

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philosophy of history, the paper's working hypothesis is the idea of a differentiated incrementalism of legitimacy and democracy in different forums of multilateral integration.

I 4. The Concepts of Legitimacy and Democracy: the Formal Minimum

Legitimacy and democracy are considered complementary but mutually irreducible concepts. I basically understand legitimacy as a procedural outcome of factual acceptance (by the ruled) and acceptability (in the sense of worthiness of acceptance according to universalizable principles). Legitimacy can therefore be defined as the acceptance of a political order by the members whereby the acceptance is established via procedures and under general conditions that are judged worthy of acceptance. The latter implies rule of law as one of its most important elements, but also other concepts, such as transparency, publicity, vertical and horizontal accountability, reciprocity, or diffuse reciprocity.¹³

Rule of law is understood as the independence, primacy, and guarantee of a legal order which is based on fundamental rights. When there is rule of law, the law or common rules of conduct represent an independent source of regulation for governmental and societal action. They may only be changed according to procedures regulated by the law or within the framework of freedom indicated by law. Rule of law implies equal validity of the law for all and therefore a guarantee of procedural justice based on individual rights. Rule of law is therefore to be considered a necessary but not sufficient condition of democracy.

¹³ For a brief explanation of „diffuse reciprocity“ see Caporaso 1993: 53-54

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Democracy can only be considered as a complex and non-analytical concept. It is based on the regulative ideas of freedom and equality¹⁴ and includes a certain number of necessary, specific, and possibly conflicting conditions of realization.¹⁵ These conditions are not assumed to be the same for democracy among national *demoi* as they are for national democracy. The complex notion of democracy is consistent with the conception of a disaggregated, differentiated and incremental realization of democracy's key elements in the multilateral realm.¹⁶ Furthermore, democracy is not considered as a comprehensive concept covering all the dimensions of legitimacy. Its most direct link to legitimacy is the concept of accountability. Some aspects of throughput and output legitimacy, however, depend on expert-evaluated and expert-guided performance. Democracy may provide legitimacy in many cases, but in others performance and outcomes can only be reasonably exercised and judged in relative independence from democratic procedures. This is common in domestic democracy where some spheres of government, for instance the judiciary, central banking, or regulation of industrial and environmental security standards, etc., are delegated to expert bodies whose accountability is organized according to special rules. These rules often fall outside the normal electoral or direct democratic voting process. They are not, however, disconnected from the rule of law and not totally disconnected from the system of democratic accountability and publicity at large.

¹⁴ Dahl 1971; Przeworski 1999; Schumpeter 1942

¹⁵ As conditions of realization of national democracy I consider: fundamental rights, inclusion, participation, political competition, representation and responsiveness, accountability, transparency, effectiveness of government, rule of law.

¹⁶ See Zürn 2000.

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I 5. State of the Problem

Besides the philosophical literature on Rawls (1)¹⁷, the paper builds on substantial and vast work that has been done on the question of legitimacy and democracy in the EU (2)¹⁸ and the multilateral realm at large (3):

(1) Rawlsian political philosophy has met with some important critiques. I follow the rejection of a large number of categorical critiques as found in the important literature on Rawls.¹⁹ More specifically, I also accept Rawls' assessment that the critiques have not been able to put into question the usefulness of the original position as "public- and self-clarification" of the normative framework of political justice.²⁰ An important critique has been raised by Ronald Dworkin who pointed out that the agreement reached in the original position is hypothetical, not binding, and of no further significance to the justification of coercion.²¹ To this, Rawls has answered that the original position offers a model of the fair conditions under which representatives, viewed as free and equal, reach an agreement. It also models acceptable restrictions on the reasons by which the parties may determine certain principles of political justice and eliminate others.²² Given these two aspects, the model enables any potential reason-giver to conjecture alone or together with others as to the best publicly acceptable reasons for certain political principles. The binding force and significance of this device is as good as the binding force and significance of any valid public justification. It does not have the binding force of law but instead offers an argument for the political justice of principles on which a law with binding force can be based. Rawls has conceded to Habermas that the hypothetical public- and self-clarification of principles has to be appropriated in real

¹⁷ See Freeman 2003

¹⁸ For overviews see: Bellamy & Castiglione 2003; Lord & Magnette 2004; Follesdal&Hix 2005.

¹⁹ For a dense and illuminating discussion see Nussbaum 2003, 491-496. See also Beatty 1983

²⁰ Rawls 2001, 17

²¹ Dworkin 1977, esp. 177-183; 1989, 16-53

²² Rawls 2001, 17

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deliberation.²³ The point however is that in real deliberation the participants are constantly in search of an equilibrium between relatively fixed general judgments and particular judgments. Although no specified kind of judgment ever carries the full weight of public justification, the original position is a device reason givers refer to when justifying the most general and freestanding principles of political justice in real deliberation. It has a limited but indispensable function in the clarification of the most general principles of political justice. This moderation in scope and reservation regarding foundational claims also puts Michael Sandel's objection into perspective according to which the original position suppresses morally relevant information and therefore does not carry the full weight of its deontological foundation.²⁴ I accept that point. The original position as a device of political philosophy is not the transcendental point of view of a foundationalist enterprise. In my understanding, it only seeks to make principles explicit for the transition from a previously accepted frame of reference to a new and integrated form of political organization. Contingent and empirically precise determinations are indispensable in the search for reflective equilibrium and the deontological weight of the original position is not directly decisive in any concrete deliberation. But insofar as reason givers refer to the most general principles of their argument, the original position models the adequate normative frame of reference to make principles explicit that are inherent in what is already presupposed. Any additional morally sensitive information has to be put to the test of due reflection based on principles emanating from the original position and then referred back to lower levels of moral abstraction with which they might be in tension.²⁵ The original position is an explicative normative device. It offers a model of public justification. It refers to hypothetical agreements with respect to

²³ See Habermas 1998, 51-59; Rawls 2005, 372-385

²⁴ Sandel 2008, 27

²⁵ Rawls 2001, 29-32

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certain principles (propositions) among distinct persons with potentially conflicting interests about which they are left in uncertainty.²⁶

The proposal to merge the two Rawlsian original positions in the case of multilateral democracy offers a middle ground between what Amartya Sen has called the rival conceptions of grand universalism and national particularism.²⁷ Multilateralism designates a limited realm of cooperation among a limited number of states. It is a misunderstanding to identify multilateral with global and to consider the national-global disjunction as a complete disjunction. My proposal is also structurally different from liberal democratic cosmopolitanism. The latter position entails the abstract presupposition of a global basic structure and an original position of world citizens or persons as such²⁸, or seeks other justifications of global institutions.²⁹ I follow Rawls' position that the presupposition of such a basic structure is moral and not political. The methodological presuppositions of my project also include a rejection of the reproach of a "perpetuity assumption", held against Rawls. Rawls' principles of the liberal law of peoples do not prohibit peoples from merging their

²⁶ This does not amount to a reduction of the original position to one person. The cognitive element of reduced information should not be isolated from the rest of the process in which different real persons may perform the mental experiment of the original position and imagine a group of representatives whose level of information is hypothetically reduced. This reduction does not eliminate their status as distinct rational actors pursuing different interests. Plurality is therefore a necessary element of the thought experiment. The interests of the representatives do not become the same by the veil of ignorance, they only become equally uncertain. My critique refers to Sandel ²1998, p. 122-32. Thomas Nagel (2005, p. 125) objects that no individual choice, even under uncertainty, is equivalent to a choice of a group. But although individual and collective choices do not have the same status, individuals can agree to the same propositions as groups and the agreement of a group can be reached by every individual giving his agreement separately. The elimination of the assignment of probabilities has nothing to do with the individuality of the representatives, but rather with the question of what "uncertainty" means. Uncertainty for Rawls means zero possibility of assigning probability (See Rawls 2001, p. 106-10). Not only do citizens not know their position in society, they do not know whether the society will be a middle class society or any other type of society. Probability considerations are therefore not possible. A situation in which they are does not represent fair conditions leading to fair outcomes.

²⁷ See Sen 2002, p. 35-51. The solution here proposed differs from Sen's idea to take into consideration the multiplicity of agencies in order to determine global justice. In a political theory this is neither possible nor feasible. My aim is restricted to the establishment of rules for the political background structure among liberal democracies. Furthermore, I do not subscribe to Sen's proposal (p. 44-47) to replace the original position by the impartial spectator, at least not in the determination of the principles of the political background structure. Reciprocity is irreducible to utilitarian impartiality as long as we take the distinctions between persons and the standpoints of the persons involved in a conflict seriously. See Rawls 1971, p. 184-192.

²⁸ See Beitz ²1999, 129-76; 1983, 591-600; Pogge 1989, 240-280; 1994, 195-224; 2001, 246-53; Kuper 2000; Ackerman 1983.

²⁹ For a recent discussion of institutional cosmopolitanism and defense of a consociationalist approach to global governance see Moore 2006, 21-43.

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institutions or redefining their boundaries in location or function if they so wish.³⁰ But if they decide to do so, a new political order is constituted to which a special set of principles applies. In order to be acceptable to the constitutive political actors, these principles need to correspond to the complexity of relations among different peoples and citizens from different peoples and can neither be directly deduced from domestic political liberalism, the general law of peoples or a cosmopolitan original position of world citizens. Rawls' law of peoples values peoples as self-governed bodies of citizens. Territories and formal sovereignty of states are thus valued to the extent that they enable the orderly and legitimate existence of liberal democratic peoples. In considering the fundamental interests of citizens and peoples together, this paper combines the liberal conception of the person with the political theory of self-government based on the constitutional consent of individual citizens. While statespeople are static and organized on a territory, the liberal conception of the person implies that citizens have to be assumed to be potential migrants. Liberal peoples have to be assumed to grant the right to exit and a conditional right to entry. They share a common fate in the exchange of migrants. Citizens of liberal peoples share a common fate as potential migrants and mobile economic and social actors. The Rawlsian assumption that the basic structure of political liberalism is to be imagined as a closed social system is in contradiction with the priority of liberty and therefore suppressed.³¹ But the mutual opening up of liberal societies does not justify a total suppression of the representation of peoples in the original position in favour of a global cosmopolitan system of persons.³² It is more in tune with the accepted normative ground of political organization if construed step by step and filtered politically (i.e. through the democratic peoples' fundamental interests). Individuals who democratically constitute

³⁰ See Buchanan 2000, 697-721; 2003, 231-33.

³¹ Rawls 1993, 12. See the criticism of this point by O'Neill 1997, 417.

³² For such an argument see Kuper 2000, 645-648.

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peoples still ought to be represented collectively as peoples because as a political unity under popular sovereignty they form a fundamental realm of justice. But in a liberal theory of political justice, the opening up of societies also means that citizens have to be represented as potential migrants and transnational actors whose fundamental rights have to be weighed against the rights of peoples and of non-migrant citizens of liberal peoples. In the original position here proposed, the representatives of the citizens have to consider principles of political justice from the point of view of stable and migrating citizens respectively. The representatives of the peoples have to take these interests into consideration and weigh them against the fundamental interests of liberal peoples. The people-representatives' agreements on the other hand have to be weighed against the fundamental interests of individual citizens, migrating or stable. The principles that the respective representatives of citizens and peoples could presumably agree upon in such an original position can be considered the basic principles of multilateral democracy.

(2) In a national-democratic school of research, the EU scores poorly in the literature on the “democratic deficit”. The authors usually evaluate the EU in the gradualist paradigm and by comparing it to their own domestic tradition. Accordingly, they diagnose either a lack of majoritarian (Westminster) parliamentarism³³, a lack of a pre-political “Volk”³⁴, a lack of centralistic statehood and universal “citoyenneté”³⁵, or a lack of direct democracy³⁶. In the process of increased preoccupation with globalization, some authors changed the paradigm and compared the EU with the state of democracy in international relations at large. The EU

³³ See e.g. Lord & Beetham 2001.

³⁴ See e.g. Kielmannsegg 1996, Grimm 1995.

³⁵ See e.g. Manent 2006.

³⁶ See e.g. Frey 1995.

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started to score rather well as the most advanced structure of democratic government beyond the nation state.³⁷ However, there is a large consensus among advocates of this position that the EU still lacks political mobilization of citizens on the EU level.³⁸ For many, this is due to an irreducible difference between domestic politics and any multilateral arrangement.³⁹ Intermediate and different approaches have coexisted with the aforementioned tendencies. There is a developmental approach which emphasizes the constant and sustained democratization of the EU ever since its foundation.⁴⁰ A structural approach, taking its cues from liberal intergovernmentalism rather than republicanism, diagnoses no real democratic deficit for the EU since the latter does not lack any essential feature of constitutional and democratic control of government as we know it from existing national democracies.⁴¹ On the other side, a republican approach has been looking for ways to base EU democracy on a constitutive rather than a liberal notion of citizenship, because the latter allegedly considers the (EU-) citizen simply as an addressee of rights and not as a constitutive element of the polity.⁴²

(3) In the case of international relations and multilateral organizations at large, the research on legitimacy and democracy has also been impressive in the past years.⁴³ It has been directed to specific features of legitimacy and democracy, such as transparency, equitable state representation, or procedural fairness, leaving aside questions of the nature of the polity of multilateral organization or of popular government in the strict sense of the term.⁴⁴ In the

³⁷ Weiler 1999; Cheneval 2004.

³⁸ Schmitter 2000; Follesdal/Hix 2005.

³⁹ Dahl 1999; Stein 2001.

⁴⁰ Telò 1995. For the democratization of new member states and candidate countries see also Schimmelfennig & Sedelmaier 2005.

⁴¹ Moravcsik 2002; 2005.

⁴² Bellamy & Castiglione 1998; 2003.

⁴³ For a general overview see Porter et al 2001; Held&Zuran 2005; Coicaud 2001.

⁴⁴ See Keohane & Nye 2001.

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center of these efforts are studies which try to establish a link between institutional differentiation and increased legitimacy in certain multilateral institutions.⁴⁵ In substantial manner, the protection of property rights has been put forward as the essential deontological element of legitimacy of the WTO.⁴⁶ Property rights are in deed important and should be guaranteed for all human persons in a wider system of human rights.⁴⁷ But taken in isolation, intellectual property rights favour industrialized exporting countries. They are not located within the framework of increased liberalization but rather of increased authoritative regulation. While general market liberalization creates win-win situations which enable all states to compensate losers better than without liberalization (if they do so it is another question), intellectual property rights do not create such conditions of Kaldor-Hicks efficiency for all. They might thus undermine the welfare case for liberalization.⁴⁸ Important work has also been done on the notion of binding sovereign consent as basis of legitimacy of the WTO and as surrogate for national-democratic legitimacy.⁴⁹ The draw backs of this position are the package deals of multilateralism which limit the differentiation of the consent and undermine the legitimacy of such consent.⁵⁰ The most promising work has been done in the analysis of legitimacy by judicial power in the WTO, especially of the Appellate Body. Most interesting is the relation that has been shown to exist between this kind of horizontal judicial accountability and increased stakeholder representation.⁵¹ But this incrementalism of stakeholder democracy by judicial means of due process or other forums⁵² does not

⁴⁵ For IMF and World Bank see Woods 2001; 2003; 2005; 2006.

⁴⁶ See Petersmann 1991.

⁴⁷ See de Soto& Cheneval 2006.

⁴⁸ See Howse 2001.

⁴⁹ Jackson 1990; Howse 2001.

⁵⁰ Bronckers 1999.

⁵¹ See Howse 2001: 375-394.

⁵² See Bohman 2005.

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fundamentally alter the fact that stakeholder democracy and contestation via global networks is very remote from the citizens' preferences.

In sum, these research results reveal a common feature. They operate in the vacuum or at least under great uncertainty with regard to the adequate normative framework of legitimacy and democracy for multilateral integration as a distinct political order. There is no framework of evaluation of rules according to criteria that include and inter-relate fairness to outsiders and fairness to insiders with the responsibility and interests of statespeople. Moral and institutional cosmopolitanism does not provide such a framework⁵³, because it imagines a world of world citizens and disregards the basic political rights of democratically organized statespeople. In cosmopolitanism, there are only insiders. This is too abstract a concept. It disregards the necessity of bounded and subsidiary government and ethical embeddings of such government. Given this vacuum, this paper tries to find a normative framework according to which the legitimacy and democratic features of multilateralism can be evaluated in their own right and by taking seriously the citizens as individual persons as well as their collective representation as statespeople. It can claim originality for its proposition to consider citizens *and* states as the two basic references of normative validity claims concerning multilateral integration. And it can claim originality for its application of an adapted Rawlsian analysis to the multilateral realm.

I 6. Two Ideal-Types of Multilateral Order

As formal framework of analysis, I distinguish two ideal-types of multilateral integration:

⁵³ See Beitz 1999; Pogge 1989; 1994, 2001; Kuper 2000.

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- (1) multilateral democracy
 - (a) is a complex system of multilateral cooperation with a membership structure of democratic states only
 - (b) aims to establish adequate democratic decision making on all levels (including the multilateral level)

- (2) liberal multilateralism
 - (a) mixed (democratic and non-democratic) structure of member-states
 - (b) commitment to certain principles which are also elements of liberal democracy (e.g. non-discrimination; economic freedom, property rights, rule of law)

The further argument is developed in two phases. In a first phase, I try to establish the principles of the more ambitious multilateral democracy. In a second phase and beyond the scope of this present paper, I ask which parts of that framework can be extended to multilateral integration without compromising fundamental principles and in view of an incremental realization of legitimacy and democracy in the member states and the multilateral realm.

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II. A Fair System of Democratic Multilateralism

II 1. The Ideal-type of Multilateral Democracy

Multilateral democratic integration combines multilateralism as coordination and cooperation of sovereign states according to generalized principles of conduct with a strict democracy condition of membership. Such a conception applies when liberal national democracies (a) delegate competencies to supranational and intergovernmental institutions but retain competence-competence and the right of exit, (b) restrict membership in the created institutions to states fulfilling certain far reaching conditions of rule of law and liberal democracy, and (c) strive to organize the supranational and intergovernmental institutions according to principles of liberal democracy.

According to the transformationalist logic, a special set of normative principles of legitimacy and democracy applies to this basic political structure. Neither the principles of national democracy nor the principles of international law can be directly applied to this structure without taking into account its special nature as distinct political order. Principles from national democracy and international law may very well be included in the basic structure of multilateral democratic integration, but this has to happen in accordance with a normative framework specific to a multilateral democratic order and organization.

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II 2. The “Original Position” (Rawls) of a Democratic Multilateral Order

In a forthcoming paper⁵⁴, I have argued that the normative references of multilateral democracy are citizens and democratically organized statespeople. Within the contractualist tradition, the main analytical device that serves to determine the principles of multilateral democratic integration is the idea of an “original position”. The fair terms of multilateral integration are conceived as agreed to by those who engage in it. In order for this agreement to be considered fair, it has to be reached under certain conditions. In particular, these conditions must situate the participants as free and equal and must not allow greater bargaining advantages to some than to others. No threat, force, coercion, and deception are reasonably allowed. Most importantly, information with regard to the position in the societal arrangement agreed upon has to be restricted counterfactually. These are basic conditions of the Rawlsian original position. However, I have modified the Rawlsian conception of the original position in accordance with the specific structure of multilateral democratic integration. The main idea of this modification is that citizens and statespeople are part of an integrated original position. This corresponds to the normative structure of multilateral democracy with citizens and democratic statespeople as irreducible normative elements.⁵⁵ The principles of the multilateral democratic order have to be acceptable in the light of the fundamental interests of citizens and statespeople in an original position.

II 3. Citizens and Statespeople as Participants of the Original Position

There is an intensive debate going on between the cosmopolitan advocates of a strictly individualist normative conception of global justice and supranational democracy on the one

⁵⁴ “Multilateral Democracy: The Original Position,” *Journal of Social Philosophy*, forthcoming

⁵⁵ See Cheneval 2008

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hand⁵⁶ and a constructivist approach advocating peoples as the normative units of political construction beyond the nation state on the other hand.⁵⁷ This dichotomy leads to normative settings in which either citizens or statespeople are the elementary normative units of reference (represented in the original position) of political organization beyond the nation state. However, multilateral democratic integration is carried out by liberal democratic peoples who are seeking to open up to each other by creating a system of transnational rights and a common institutional framework of government. If one reduces the normative framework of this arrangement to individual citizens, as in abstract cosmopolitanism, the fundamental interests of sovereign peoples who engage in the process will not be adequately accounted for and most likely violated by powerful states and social actors. Furthermore, the political feasibility of integration will suffer, because in multilateral integration individuals act collectively as statespeople. The mutual opening up of liberal societies and common vertical democratization does therefore not justify a total suppression of the normative units of peoples in favour of an abstract individualist system of human persons (cosmopolitanism). Vertical democratization has to be filtered politically, i.e. through the representation of democratic peoples' fundamental interests.

On the other hand: as multilateral democratic integration is carried out by liberal democratic peoples, it would amount to a simple denial of normative individualism if the individual citizens as normative units of reference would be disregarded in favour of the fundamental interests of peoples as such (classical internationalism). Vertical democratization of the multilateral realm emerging from liberal democracies has to envision the enhancement of rights, freedoms, and the well being of the citizens within the new space of multilateral

⁵⁶ See e.g. Beitz ²1999:129-76; 1983: 591-600; Pogge 1989: 240-280; 1994: 195-224; 2001: 246-53; Kuper 2000: 640-674.

⁵⁷ See Rawls 1999; Nagel 2004.

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democratic integration. The rights and freedoms of citizens are not adequately accounted for by representing the peoples' fundamental interests or individual basic human rights only. In the system of multilateral democratic integration citizens' fundamental interests have to be accounted for from a twofold perspective: 1. As sedentary citizens of a specific people holding all the political and social rights granted by their national democracy. 2. As migrant citizens within the system. As such they are potentially losing some rights of their country of origin and potentially gaining new rights in the host country. In sum, in multilateral democratic integration, liberal democratic peoples, citizens of liberal democratic peoples, and intra-systemic migrant citizens have to be considered the normative units of reference of a framework of political justice and democracy along side with democratically constituted peoples. I therefore propose a modification of Rawlsian and cosmopolitan methodology. The point is that the liberal conception of a fair system of cooperation and non-domination among democratic peoples calls for an integrated "original position" of representatives of liberal democratic peoples *and* of citizens of the peoples involved in the process.

II 4. The Veil of Ignorance

The original position⁵⁸ is a hypothetical bargaining situation in which rational representatives defending their fundamental interests consider themselves as free and equal. The veil of ignorance restricts the information of the representatives with regard to their own identification. The original position contains a finite group of citizen- and people-representatives with distinct traits that are theoretically defined. In this original position there

⁵⁸ See Rawls 1993: 22-28; 1999: 30-35.

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are as many possible worlds as there are possible combinations of types of participants and traits. The veil of ignorance does not change this, it does not multiply the possible worlds, nor does it change the general knowledge the participants have of all the possible worlds within the original position. It rather changes the knowledge the participants have about their actual position or any of their future positions. It is therefore also important to presuppose a plurality of participants with conflicting interests. The veil of ignorance does not reduce the participants to one, nor does it multiply the possible worlds.⁵⁹ The main reason to adopt the device of a “thick”⁶⁰ veil of ignorance in the original position of multilateral democratic integration is to avoid the danger that bargaining advantages will distort the finding of just principles.⁶¹ The original position and the veil of ignorance are analytical tools in which information is crucial. Ways to ensure fair bargaining other than the veil of ignorance, such as simple prohibitions to force principles upon others which they do not accept (e.g. the unanimity principle)⁶² are insufficient for the analytical task of defining principles. They give us no criterion to identify just or unjust positions and only ensure that nothing is accepted against anybody’s will. But, as already Étienne de la Boétie knew⁶³, what is factually accepted can be unjust, even when implemented without coercion. It has also been shown that the unanimity rule provides strategic incentives to conceal private information.⁶⁴ Given a situation of possible dissent under the unanimity rule, information would be restricted in way that possibly distorts the finding of fair principles. In short, the unanimity rule cannot replace the veil of ignorance in the task of finding principles of justice.

⁵⁹ For this reproach see Hare 1989: 81-108.

⁶⁰ See Freeman 2003: 10-20.

⁶¹ See Rawls 2001: 15-16.

⁶² See Scanlon 2003: 155-156.

⁶³ See Étienne de la Boétie, *Discours de la servitude volontaire* [1574], éd. Par Simon Goyard-Fabre Paris: Flammarion 1983).

⁶⁴ See Austen & Feddersen 2006.

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In the setting of multilateral democratic integration, the domestic liberal-democratic structures and the liberal law of peoples are presupposed. The representatives of the original position of multilateral democratic integration only establish the special principles relevant to this particular form of political organization. Therefore, additional information relevant to this bargaining process has to be available and some information relevant to bargaining advantages has to be withheld. The following conditions are needed to establish the relevant levels of information: (1) In the domestic original position, citizens do not know the social positions, comprehensive doctrines, race, ethnic group, sex, and native endowments of the persons they represent, but they know that these differences exist. These restrictions also apply in the original position of multilateral democratic integration. (2) In the original position of multilateral democratic integration, the citizen representatives know that they represent citizens from different liberal democratic countries with different constitutional arrangements within the range of liberal democracy. (3) In the original position of the law of peoples, people representatives do not know which branch of government they belong to, if at all, they do not know the size of the territory, the population, the relative strength, the extent of natural resources, or the level of economic development of their statespeople.⁶⁵ These restrictions also apply in the original position of multilateral democratic integration. (4) In the original position of multilateral democratic integration, the people representatives know that in their societies favourable conditions apply that make liberal democracy possible. The point of view of the people representatives is thus rather similar to the law of peoples. (5) The additional restrictions of information that apply in the original position of multilateral democratic integration are that the citizen representatives do not know their country of origin, nor do they know if they represent sedentary or migrating citizens within the system, but they do know

⁶⁵ Rawls 1993: 24-25; 1999: 30-35.

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that this difference exists and they know its relevance. The state-representatives do not know which state they represent but they do know the social positions and fundamental interests of states involved in a process of multilateral democratic integration.

The just principles of a system of multilateral democratic integration are thus formulated as principles on which representatives of peoples, citizens and migrant citizens would agree under the conditions of the original position and veil of ignorance. The idea is not to necessarily invent new principles, but to identify which principles known from national democracy and international relations specifically apply to multilateral democratic integration.

II 5. Principles of a Multilateral Democratic Order

The principles to be included in the list of basic principles of multilateral democracy have to apply to the multilateral order as such, i.e. as basic structure. They thus form the specific basis for the general institutional arrangement and most basic constitutional rules governing the multilateral order. Many fundamental principles are thus missing in the following analysis, (a) because they apply to the national democratic order, (b) because they are presupposed as accepted by the democratic statespeople independently of their entering into the multilateral order, (c) because they are not basic principles of the multilateral order as such, (d) because they form part of the international order also recognized by non-democratic (decent) societies. We thus only establish the principles that are specific to multilateral democracy as political order of government composed by democratic nation states. Basic acceptance of human rights and freedoms, universal representation, separation of powers and/or checks and balances,

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vertical and horizontal accountability, rule of law, participatory rights of citizenship, recognition of minorities, etc. are thus not included in the list, but they form part of the “luggage” which the democratic statespeople bring to the negotiations of the basic order of multilateral democracy. In addition, it can be presupposed that the participating states of multilateral democracy honour all obligations of international law and recognize the primacy of international law. States which do not recognize these national democratic and international principles will not be admitted to or will not be willing to join the democratic multilateral order. The states that recognize them and want to be part of multilateral democracy will seek the most adequate institutional solution to honour these principles in the multilateral order.

1. Principle of Popular Sovereignty Regarding Accession to the Multilateral Democratic Order and Change in the Basic Rules

Hypothesis: Behind the veil of ignorance, citizens and statespeople representatives agree that accession to a specific democratic multilateral order is in the competence of the *pouvoir constituant* of the democratic statespeople. No statespeople ought to be forced into a democratic multilateral order by (a) the decision of its executive or legislative branch of government only, (b) by majority decision of a group of states, (c) by majority decision of citizens which are not members of the democratic state in question.

Analysis:

- i) Under conditions of reasonably complete information, some governments and the parliamentary majorities supporting them might want to accede to a multilateral

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- institution in order to enhance executive power, or in order to lock policies into an intergovernmental realm of decision making less accountable to national parliamentary opposition, national courts, voters, domestic civil society, etc.
- ii) Under conditions of reasonably complete information, some governments and their citizens would be inclined to force less powerful states into the multilateral organization's realm of governance. They would do this in order to impose certain regimes and laws on them, and possibly to benefit from their resources. In the absence of sovereign consent, powerful states can thus dominate multilateral orders and expand their realm of influence through the multilateral order.
 - iii) Under conditions of the original position, citizen and statespeople representatives will find any decision to join a multilateral order unacceptable that is taken by only one branch of government. They will consider the decision to join and the partial delegation of the exercise of government authority beyond the realm of the statespeople as a decision that belongs to the statespeople as such.
 - iv) Under the same conditions and thus not knowing which statespeople they belong to, citizen and statespeople representatives will perceive imposed membership in a specific multilateral order as an unacceptable form of domination.
 - v) Given the conditions of the original position, citizens and statespeople representatives will agree that any adherence to the multilateral order concerns the constitutional order as such and is an act of sovereignty. The decision to join a multilateral order ought to reflect a broad reasonable consensus. The decision therefore ought to be submitted to broad and intensive national deliberation and to the collective decision of the citizens organized as people. As an act of sovereignty, accession to a specific multilateral order is in the competence of the *pouvoir constituant*.

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- vi) Follows that any substantive change of the basic rules and institutional design of the multilateral order by a new treaty ought to be submitted to the same domestic deliberation and decision making process of the *pouvoir constituant*.
- vii) Follows that the accession of new members ought to be submitted to the sovereign consent of the actual members of a democratic multilateral order.

2. Principle of Indivisibility and Non-discrimination

Hypothesis: Behind the veil of ignorance, citizen and people representatives agree on the principle of indivisibility and non-discrimination of members. Favours, benefits, rights, or duties that are granted to one state by another have to be granted to all. Rights, benefits, or duties granted by one state to the citizens or legal persons of another, ought to be extended to all.

Analysis:

- i) Under conditions of reasonably complete information, states and citizens might want to maximise interests via preferential treatments, factionalism or other *divide et impera* strategies.
- ii) In the original position, citizens and statespeople representatives will agree on the principle of indivisibility and non-discrimination of states, citizens, and legal persons regarding all matters stipulated by the multilateral order.

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3. Principle of Legitimate Constitutional Difference

Hypothesis: Behind the veil of ignorance, citizen and people representatives agree on the principle of legitimate constitutional difference. All constitutional rules that are not specified by and do not violate a unanimously ratified multilateral treaty remain in the competence of the *pouvoir constituant* of the member states. The democratic multilateral order thus allows for the coexistence of different constitutional orders.

Analysis:

- i) Under conditions of full information, representatives of powerful states and/or powerful individuals may tend to impose on others a constitutional model that is more familiar to them or serves their interests to the detriment of others. Powerful states and social actors more apt to control the centre of power would tend to impose a centralistic model of government on all states.
- ii) In the original position, people and citizen representatives will not find any national constitutional model acceptable which has not been approved and appropriated by the citizens of that specific political community.
- iii) In the original position, people and citizen representatives will accept such constitutional rules as necessarily common constitutional rules of the multilateral order which directly follow from the principles of reciprocal obligation and non-discrimination.

4. Principle of Freedom of Movement and Residence of all Citizens of Member Statespeople

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Hypothesis: Behind the veil of ignorance, citizen and people representatives agree on a common principle of freedom of movement and residence of citizens of all member states within the borders of all member states of the multilateral democratic order. Restrictions to this principle are possible only under special circumstances, such as pandemics and natural disasters. The principle of mobility implies factor mobility as individuals are presumed to have the right to move physically but also with their goods, their capacity to provide services, their savings, etc.

Analysis:

- i) Under conditions of reasonable complete information, citizens (and groups of citizens) and states will find numerous criteria of exclusion of individual, groups or classes of migrants for numerous reasons. Certain professional groups will want to protect their job market by general restrictions, but keep other job markets open in order to profit from cheaper labour. States will try to export unemployment and thus rely on other states' liberal migration regimes, but they might try to restrict immigration.
- ii) In an original position of multilateral democracy, citizen representatives not knowing whether they will form part of those who want to migrate or of those who want to keep others from immigrating, they will prefer the general right to migrate as offering a richer set of options and a more advantageous regime of creating prosperity.
- iii) In the original position, people representatives will agree to this principle of free, but reciprocally guaranteed and multilaterally regulated mobility because of the more advantageous welfare effects it offers to all participating peoples.

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5. Principle of Legitimate Restriction of Positive Linguistic Rights

Hypothesis: Behind the veil of ignorance, citizen and people representatives agree on the right of the statespeople to restrict positive linguistic rights – such as the right to public education and information in a specific language – to the languages recognized in the constitutional order of the statespeople in question and/or its sub-units.

Analysis:

- i) Under conditions of reasonably complete information, migrants might want to claim positive linguistic rights in their host country, such as public education for their children in their language of origin, or the right to government information and documentation in their language of origin. The resident citizens and the host people might be strongly inclined to reject this right out of fear of losing linguistic cohesion and, if migration is massive, they might feel that they have to defend their cultural identity essentially reproduced through the language.
- ii) Under conditions of the original position, citizens do not know whether they are migrants or sedentary citizens. People representatives do not know whether they represent a host country or a country of origin of migrants. Under such circumstances, no representative finds a linguistic arrangement acceptable which is conducive to the loss of linguistic cohesion of a participating statespeople. The restriction of positive linguistic rights of migrants is thus acceptable. Also the right to private education excluding the language of the host country can be denied, and the host countries' or

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sub-unit's language can be imposed as one of the principal languages in which private education has to be offered.

- iii) The restriction of negative linguistic rights, i.e. the right to speak and communicate in a language with others, is not acceptable under conditions of the original position.

6. Principle of Combined Citizen and Statespeople Representation in Secondary Multilateral Rule Making

Hypothesis: Behind the veil of ignorance, citizen and people representatives agree on a combination of universal direct representation along side with statespeople representation for the secondary legislative process of multilateral democracy. This requires linking intergovernmental decision-making with parliamentary decision making on the multilateral level and restricting the competencies of this process to fields stipulated by treaties.

Analysis:

- i) Under conditions of reasonably complete information, the executive branch of government will tend to keep the secondary rule making process on the multilateral level in the hands of the executives.
- ii) Under the same conditions, executive representatives of large statespeople will not be opposed to universal representation as their weight increases through this institution compared to a strict intergovernmental system favouring small statespeople.
- iii) Under conditions of reasonably complete information, citizens of large statespeople will prefer universal representation in a multilateral parliament. Citizens of smaller

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statespeople will perceive this as a loss of influence and tend to prefer governmental representation.

- iv) In the original position, representatives of both citizens and statespeople will find it acceptable to have both universal and governmental representation and a procedural link between the two securing balanced decisions. There is a clear difference between the contractualist and the rational choice approach. In principal-agent or functional analysis, the European parliament is an outlier for which there is no rational function⁶⁶, the contractualist model is able to give a reason for universal representation on the multilateral level.

7. Principle of Common Jurisdiction

Hypothesis: Behind the veil of ignorance, citizen and people representatives agree on the creation of a common realm of jurisdiction by a highest court which exercises judicial control over all aspects of the multilateral order as stipulated by the treaties and secondary laws established according to the above mentioned principles.

Analysis:

- i) Under conditions of reasonably complete information, representatives of powerful statespeople will prefer diplomatic bargaining and dispute settlement to a rule and rights based system overseen by an independent judiciary.

⁶⁶ Moravcsik 1998: 376; Pollack 2003: n. 27, p 203f.

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- ii) Under the same conditions, representatives of small and weak states will prefer a rule and rights based system of law protecting them from the exercise of power of powerful states and powerful social actors.
- iii) Under the same conditions, citizens representing powerful social actors with a direct influence on their governments will prefer diplomatic bargaining and dispute settlement to a rule and rights based system of law.
- iv) Under the same conditions, citizens who cannot exercise direct pressure on their governments and who do not belong to powerful statespeople will prefer a rule and right based system overseen by an independent judiciary. They will perceive diplomatic bargaining and dispute settlement as an insufficient guarantee of the rule of law and will fear that their rights will not be respected.
- v) In the original position, citizen and people representatives agree on a rule and right based system of law overseen by an independent highest judiciary. Diplomatic bargaining and dispute settlement represent unacceptable disadvantages to less powerful citizens and statespeople.

8. Principle of Social Cohesion

Hypothesis: Behind the veil of ignorance, citizen and people representatives agree (a) that the principle realm of distributive justice is to be located at the political unit with the highest level of allegiance and trust of citizens; and (b) that there needs to be a redistributive regime of social cohesion among the realms of distributive justice.

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Analysis:

- i) Under conditions of reasonably complete information, citizens will challenge the status quo (= domestic realm as realm of distributive justice) and opt for an extension of the realm of redistributive justice to the multilateral order if this makes redistribution more sustainable and gives them higher individual net benefits (be it as recipients or as taxpayers). In a scenario of extension of the order of redistributive justice beyond national borders, citizens will anticipate trade-offs between the sustainability and the cost/benefit function. The trade-offs will change in relation to the wealth and stability of the order to which their own order is extended or restricted (social gerrymandering). Not all possible extensions to a wealthier multilateral realm of distributive justice will be beneficial for less advantaged citizens as the multilateral order might offer a lesser degree of redistribution. Not all possible extensions to the multilateral realm of distributive justice will be beneficial for advantaged citizens as this realm might impose higher costs (taxes) on them than the domestic status quo (or vice versa).
- ii) Under conditions of reasonably complete information, the citizens will know that the extension of the realm of distributive justice will most likely decrease the mutual trust among the citizens and the trust in a common redistributive system. Multilateral policies will thus tend towards a decrease rather than to an increase of redistributive measures, certainly for citizens living in a system with a high degree of redistribution or with relatively modest but reliable and efficient redistribution.
- iii) Under conditions of reasonably complete information, statespeople representatives will opt for a maximum of coordination with other domestic policies in the determination of redistributive policies, and thus for a maximum of autonomy. For people representatives, an extension of the system beyond domestic borders is only attractive

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if the partner countries are wealthier and thus help expand the general welfare effect of the redistributive system. The extension is unattractive if the participants of the extended realm of redistribution are less wealthy or wealthier but perceived as less efficient. Among the multilateral partners, some will be trusted more than others.

- iv) In the original position, citizen and people representatives will thus agree on the principle that the realm of distributive justice ought to coincide with the realm of allegiance and trust of the citizens.
- v) Regarding the acceptable differences among the realms of distributive justice, the citizens and people representatives agree on the principle of social cohesion providing for investments into basic infrastructure of the least advantaged members of the multilateral order at the cost of the wealthier members.

Conclusion

Contemporary political theory is working on the basis of the national-global dichotomy.⁶⁷ This paper tries to break through this false dichotomy by developing basic normative conditions for the democratic multilateral order as a distinct political order. The latter reacts to the challenges of globalization and of universal claims for justice with incremental, functionally differentiated, constitutionally and democratically based integration between democratic statespeople seeking to institutionalize a fair system of cooperation for citizens and statespeople.

⁶⁷ See Held 1995; Scheffler 1999; Kuper 2000.

Literature:

- Auer, Andreas (1998), « La démocratie directe dans le contexte européen: origine, conditions, pratique », in: Épiney, Astrid/Siegwart Karine 1998.
- Austen David & Timothy J. Feddersen (2006), “Deliberation, Preference Uncertainty, and Voting Rules,” *American Political Science Review* 100/2, p. 209-217.
- Beitz, Charles (1999), *Political Theory and International Relations*, Princeton: Princeton University Press.
- Bellamy, Richard/Castiglione, Dario (1998), ‘Between Cosmopolis and Community : Three Models of Rights and Democracy within the European Union’, in : Daniele Archibugi/David Held/Martin Köhler (eds.), *Re-imagining Political Community. Studies in Cosmopolitan Democracy*, Standford: Stanford University Press, p. 152-178.
- Bellamy, Richard/Castiglione, Dario (2003), ‘Legitimizing the Euro-Polity and its Regime. The Normative Turn in EU Studies’, in: *European Journal of Political Theory* 2(1) p. 7-34.
- Bohman, James (2005), “From demos to demoi. Democracy across borders, in: *Ratio Iuris* 18/3, p. 293-314.
- Bronckers, Marco (1999), “Better Rules for a New Millenium: A Warning Against Undemocratic Developments in the WTO”, in: *Journal of International Economic Law* 2/4, p. 547-566.
- Brown, Chris (1994), ‘The Ethics of political restructuring in Europe. The perspective of constitutive theory’, in : id. 1994, p. 163-184.
- Brown, Chris (ed.) (1994), *Political Restructuring in Europe. Ethical Perspectives*, London: Routledge.
- Caporaso, James A. (1993), “International Relations Theory and Multilateralism: The Search for Foundations”, in: Ruggie 1993, p. 51-90.
- Cederman, Lars-Erik (2001), ‘Nationalism and Bounded Integration: What it Would Take to Construct a European Demos’, in: *European Journal of International Relations* 7/2, S. 139-174.
- Cheneval, Francis (2003), “Die kosmopolitische Transgressivität der modernen Demokratie“, in: G. Kohler/U. Marti (Hg.), *Konturen der neuen Welt(un)ordnung. Beiträge zu einer Theorie der normativen Prinzipien internationaler Politik*, Berlin/New York: de Gruyter, p. 102-119.
- Cheneval, Francis (2004), „Die Europäische Union und das Problem der demokratischen Repräsentation“, in: *Basler Schriften zur europäischen Integration* 67 (2004) 35 S.
- Cheneval, Francis (2005), „Die EU und der Prozess ihrer Legitimation“, in: Ders. (ed.), unter Mitarbeit von A. Utzinger und S. Dänzer, *Legitimationsgrundlagen der Europäischen Union*, Münster/London: Lit 2005.
- Cheneval, Francis (2005a), *La Cité des peuples*, Paris : Cerf.
- Cheneval, Francis (2006), “Constitutionalizing Multilateral Democratic Integration”, in: *Archiv für Rechts- und Sozialphilosophie*, Beihefte 105 (2006) p. 30-44.
- Cheneval, Francis (2008), “Multilateral Democracy: The Original Position”, forthcoming in: *Journal of Social Philosophy*
- Coicaud, Jean-Marc & Veijo Heiskanen (eds.) (2001), *The Legitimacy of International Organizations* (Tokyo: United Nations University Press).
- Coicaud, Jean-Marc (2001), “International organizations, the evolution of international politics, and legitimacy”, in: Coicaud & Heiskanen, p. 519-552.

Preliminary draft: do not quote without permission

- Dahl, Robert A. (1971), *Polyarchy. Participation and Opposition* (New Haven, London: Yale University Press).
- Dahl, Robert (1989), *Democracy and its Critics* (New Haven, London: Yale University Press).
- Dahl, Robert (1999), "Can International Organizations be Democratic? A Skeptic's View", in: I. Shapiro/ C. Hacker-Cordón (eds.), *Democracy's Edges*, Cambridge: Cambridge University Press, p. 19-37.
- De Búrca, Grainne (ed.) (2003), *the EU and WTO: Legal and constitutional issues* (Oxford: Hart).
- De Soto, Hernando & Francis Cheneval (2006), *Realizing Property Rights*, Zürich: Rüffer&Rub.
- Épiney, Astrid/Siegwart, Karine (1998), *Direkte Demokratie und Europäische Union/Démocratie directe et Union européenne*, Fribourg: Éditions universitaires.
- Eriksen, Erik O. : 'Europe in Search of its Legitimacy' *Arena working papers WP 02/38*: http://www.arena.uio.no/publications/working-papers2002/papers/02_38.xml
- Eriksen, Erik O/Fossum, John E. (2000) : The EU and Post-National Legitimacy, *Arena Working Paper 26/2000*: http://www.arena.uio.no/publications/working-papers2000/papers/00_26.xml
- Esposito, Frédéric (2003) : 'The European Referendum as a Tool to Legitimate the European Integration Process ?', in Stuart Nagel (ed.), *Policymaking and Democracy. A Multinational Anthology*, New York/Oxford, Lexington Books, p. 15-37.
- Ferry, J.-M. (2000), *La Question de l'État européen*, Paris: Gallimard.
- Ferry, J.-M. (2005) : « Sur le sens politique de l'Europe: Les voies d'une constitution post-étatique », in: Cheneval 2005, p.
- Ferry, J.-M. (2005a), *Europe. La voie kantienne. Essai sur l'identité postnationale* (Paris: Cerf).
- Flathman, R.E (1995), 'Legitimacy', in: R. E. Goodin/Ph. Pettit: *A Companion to Contemporary Political Philosophy*, Oxford: Blackwell, p. 527-533.
- Føllesdal, Andreas & Simon Hix (2005), "Why there is a democratic deficit in the European Union. A Response to Majone and Moravcsik", *European Governance Papers*, No. C-05-02, at: <http://www.connex-network.org/eurogov/pdf/egp-connex-C-05-02.pdf>
- Føllesdal, Andreas (2004), 'Legitimacy Theories of the European Union', *Arena Working Papers 04/15* : http://www.arena.uio.no/publications/working-papers2004/papers/04_15.xml
- Forman, Shepard & Derk Segaar (2006), "New Coalitions for Global Governance: The Changing Dynamics of Multilateralism", *Global Governance* 12 (2006) p. 205-225.
- Franck, Thomas M. (1995), *Fairness in International Law and Institutions* (New York: Oxford University Press) p. 25-46.
- Freeman, Samuel (2003), "Introduction: John Rawls – An Overview, in: Id. (ed.), *The Cambridge Companion to Rawls*, Cambridge: Cambridge University Press, p. 10-20.
- Gehring, Thomas (2002), *Die EU als komplexe internationale Organisation* (Baden-Baden: Nomos).
- Greven, M. Th. (2000), „Can the European Union finally become a Democracy?“, in: Idem & L. W. Pauly: *Democracy beyond the State*, Lanham: Rowman& Littlefield, p.35-61.
- Grimm, Dieter (1995), *Braucht Europa eine Verfassung?*, München 1995
- Hare, Richard M. (1989), "Rawls' Theory of Justice," in: Norman Daniels (ed.), *Reading Rawls*, Stanford: Stanford University Press, p. 81-108

Preliminary draft: do not quote without permission

- Held, David & Michael Zuran (eds.) (2005), *Global Governance and Public Accountability* (Oxford: Blackwell).
- Held, David (2005), "Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective", in: Held&Zuran 2005, p. 240-267.
- Héritier, Adrienne (1999), 'Elements of democratic legitimation in Europe: an alternative perspective', in: *Journal of European Public Policy* 6/2, S. 269-282.
- Howse, Robert (2001), "The Legitimacy of the World Trade Organization", in: Coicaud 2001, p. 355-407.
- Hug, Simon (2002), *Voices of Europe. Citizens, Referendums, and European Integration*, Lanham: Rowman & Littlefield.
- Jackson, J.H. (1990), *Restructuring the GATT system* (London: Pinder).
- Kahler, Miles (2005), "Defining Accountability Up: the Global Economic Multilaterals", in: Held&Zuran 2005, p. 8-34.
- Keohane, Robert & Joseph Nye (2001), "Democracy, Accountability and Global Governance", June 27, 2001, at:
- Keohane, Robert & Joseph Nye (2001a), "The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy", in: Porter et al. 2001, p. 264-294.
- Kielmansegg, Peter Graf (1994), „Integration und Demokratie“, in: M. Jachtenfuchs, B. Kohler-Koch (Hg.), *Europäische Integration* (Opladen 1996).
- Kraus, P.A. (2003), 'Cultural Pluralism and European Polity-Building: Neither Westphalia nor Cosmopolis', in: *Journal of Common Market Studies* 41/4, S. 665-686.
- Kuper, Andrew (2000), "Rawlsian Global Justice. Beyond 'The Law of Peoples' to a Cosmopolitan Law of Persons", in: *Political Theory* 28/5, p. 640-674.
- Lord, Christopher & David Beetham (2001), Legitimizing the EU: Is there a 'post-parliamentary basis' for its legitimation?, in: *Journal of Common Market Studies* 39/3, p. 443-462.
- Lord, Christopher/Magnette, Paul (2004), 'E Pluribus Unum? Creative Disagreement about Legitimacy in the EU', in: *Journal of Common Market Studies* 42/1, S. 183-202.
- Magnette, Paul (2000), *L'Europe, l'État et la démocratie*, Bruxelles: Éditions complexe.
- Manent, Pierre (2006), *La raison des nations : Réflexions sur la démocratie en Europe*, Paris : Gallimard.
- Marks, Susan (2001), "Democracy and International Governance", in: Coicaud (2001), p. 47-68.
- Moravcsik, Andrew (1998), *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca: Cornell University Press.
- Moravcsik, Andrew (2002), 'In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union', in: *Journal of Common Market Studies* 40/4, S. 603-624.
- Moravcsik, Andrew (2005), "Is there a 'Democratic Deficit' in World Politics? A Framework of Analysis", in: Held/Zuran 2005, p. 212-239.
- Morgan, Glyn (2005), *The Idea of a European Superstate. Public Justification and European Integration*, Princeton, Princeton University Press.
- Nagel, Thomas (2005), "The Problem of Global Justice", in: *Philosophy & Public Affairs* 33/2, p. 113-147.
- Nicolaïdis, Kalypso (2003), 'The New Constitution of European Democracy?', *The Federal Trust Constitutional Online Paper* 38/3,
<http://www.fedtrust.co.uk/default.aspx?groupid=0&search=online%20constitutional%20papers>

Preliminary draft: do not quote without permission

- Nicolaïdis, Kalypso (2004), 'We, the Peoples of Europe ...', in: *Foreign Affairs* 83/6.
- Nye, Joseph et al., "The 'Democracy Deficit' in the Global Economy: Enhancing the Legitimacy and Accountability of Global Institutions. *Task Force Report No. 57*. Washington, D.C.: Trilateral Commission.
- Ostry, Sylvia (2006), "The World Trade Organization: NGOs, New Bargaining Coalitions, and a System under Stress", *University of Toronto, Munk Centre for International Studies*, Occasional Paper IV.
- Petersmann, Ernst-Ulrich (1991), *Constitutional Functions and Constitutional Problems of International Economic Law* (Boulder: Westview).
- Pogge, Thomas (1989), *Realizing Rawls*, Ithaca: Cornell University Press.
- Pogge, Thomas (1994), "An Egalitarian Law of Peoples," in: *Philosophy and Public Affairs* 23/3, p. 195-224;
- Pogge, Thomas (2001), "Rawls on International Justice", in: *The Philosophical Quarterly* 51/203, p. 246-253.
- Pollack, Mark A. (2003), *The Engines of European Integration*, Oxford: Oxford University Press 2003.
- Porter, Roger B. et al. (2001), *Efficiency, Equity, and Legitimacy: The Multilateral Trading System at the Millennium*. Washington D.C.: Center for Business and Government, Harvard University and Brookings Institution.
- Przeworski, Adam (1999), "Minimalist Conception of Democracy: A Defense," in: I. Shapiro and C. Hacker-Cordon (eds.), *Democracy's Value* (Cambridge: Cambridge University Press).
- Rawls, John (1993), *Political Liberalism*, New York: Columbia University Press.
- Rawls, John (1999), *The Law of Peoples*, Cambridge: Harvard University Press.
- Rawls, John (2001), *Justice as Fairness. A Restatement*, Cambridge: Belknap Press.
- Ruggie, John Gerard (ed.) (1993), *Multilateralism Matters* (New York: Columbia University Press).
- Ruggie, John Gerard (ed.) (1993a), "Multilateralism: The Anatomy of an Institution", in: Ruggie 1993, p. 3-47.
- Sarooshi, Dan (2003), Some Preliminary Remarks on the Conferral by States of Powers on International Organizations, *Jean-Monnet Working Paper 4/03* : <http://www.jeanmonnetprogram.org/papers/03/030401.html>
- Scanlon, T.M. (2003), "Rawls on Justification", in: Samuel Freeman (ed.), *The Cambridge Companion to Rawls*, Cambridge: Cambridge University Press, p. 155-156.
- Scharpf, Fritz (1999), *Regieren in Europa. Effektiv und demokratisch?* (Frankfurt: Campus).
- Scheffler, Samuel 1999: Conceptions of Cosmopolitanism, in: *Utilitas* 11/3, p. 255-276.
- Schimmelfennig, Frank & Ulrich Sedelmeier (eds.) (2005), *The Politics of European Union Enlargement. Theoretical Approaches*, Routledge.
- Schmidt, Vivien A. (2004), 'The European Union: Democratic Legitimacy in a Regional State?,' in: *Journal of Common Market Studies* 42/5, p. 975-997.
- Schmitter, Philippe (2000), *How to Democratize the European Union ... And Why Bother*, Lanham: Rowman & Littlefield.
- Schumpeter, Joseph A. (1942), *Capitalism, Socialism and Democracy* (New York:).
- Shafer, Gregory G. (2001), "The World Trade Organization Under Challenge: Democracy and the Law and Politics of the WTO's Treatment of Trade and Environment Matters", *Harvard Environmental Law Review* 25/2.

Preliminary draft: do not quote without permission

- Slaughter, Anne-Marie (2005), “Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks”, in: Held&Zuran 2005, p. 35-66.
- Stein, Eric (2001), “International Integration and Democracy: No Love at First Sight”, *The American Journal of International Law* 95/3, p. 489-534.
- Teló, Mario (1995), “Démocratie internationale et démocratie supranationale en Europe”, in: M.T. (éd), *Démocratie et construction européenne* (Bruxelles: Éditions de l’Université de Bruxelles).
- Van Oudenaren, John (2005), “Transatlantic Bipolarity and the End of Multilateralism”, *Political Science Quarterly* 120/1.
- Weiler, J.H.H. (1999), *The Constitution of Europe*, Cambridge: Cambridge University Press.
- Weiler, J.H.H. (2001), “The Rule of Lawyers and the Ethos of Diplomatic Reflections on WTO Dispute Settlement”, in: Porter et al., p. 334-350.
- Woods, Ngaire & Amrita Narlikar (2001), “Global Economic Governance and Accountability: the WTO, the IMF and the World Bank” (with Amrita Narlikar), *International Social Science Journal* 53/170, p. 569-583.
- Woods, Ngaire & Domenico Lombardi (2006), “Uneven Patterns of Governance: How Developing Countries are Represented in the IMF”, *Review of International Political Economy*, 13/3, p. 480-515.
- Woods, Ngaire (2003), “Order, Justice, the IMF, and the World Bank”, in: Rosemary Foot, John Gaddis, and Andrew Hurrell (eds), *Order and Justice in International Relations* (Oxford: Oxford University Press) p. 80-102.
- Woods, Ngaire (2003a), “Unelected Government: Making the IMF and the World Bank More Accountable”, in: *The Brookings Review* (Spring) p. 9-12.
- Woods, Ngaire (2005), “Democratizing the IMF: the role of Parliaments” (with Andrew Eggers and Ann Florini), in: Barry Carin & Angela Wood (eds), *Accountability of the International Monetary Fund* (Ashgate and IDRC) p. 38-61.
- Woods, Ngaire (2005), “Held to Account: Inter-Governmental Institutions in the World Economy”, in: *Ethics and International Affairs* 17/1 (2003) p. 69-80; subsequently reprinted in: Andrew Kuper (ed.), *Global Responsibilities: Securing Rights by Defining Obligations* (Routledge 2005).
- Zürn, Michael (1998), *Regieren jenseits des Nationalstaates* (Frankfurt: Suhrkamp 1998).
- Zürn, Michael (2000), “Democratic Governance Beyond the Nation State: The EU and Other International Institutions”, in: *European Journal of International Relations* 6/2, p. 183-221.