Conflict and Emphasis: The democratic trouble of normative federal theory

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1. Introduction

1.1. Setting the stage

Dutch provinces disobeying national legislation, mayors dismissing a prime minister's statements, the *Bundesverfassungsgericht* undoing EU-measures, or US states rejecting federal policies: inter-tier conflict is commonplace in federal systems of government. Democratic disagreement is quickly caught up in a dynamic of opposition and representation. Interpretations of the phenomenon vary wildly: while one instance may be deemed exemplary of healthy democratic opposition, the other is categorized as useless sand in otherwise smoothly running federal machinery. These labels, of course, depend on context and interpreter, nonetheless, they reveal a grand lack of consensus on the nature of inter-tier conflict within federal systems. As a result, description of the phenomenon is challenging. Normative federal theory, arguing in favour of constellated systems of government, too, lacks coherent description of the phenomenon. As federalism has often functioned as the representational solution in multinational or strongly pluralist states, uniting previously distinct polities, or, through devolution, easing tensions of struggling centralized states, it has become a common institutional answer to questions of group rights within liberal political thought. Federalism is claimed to offer places of recognition, to harbour diversity and pluralism, instituting, in a way, a sentiment of empathy, through its communalizing unity through difference. Contemporary normative federal theory, rooted in the analytic liberal revival of the 1970's, emphasizes qualities of representation, pluralism, and the possible marriage of liberal rights with cultural and group rights. It does not, however, account for the prevalence of inter-tier conflict, accurately describe it, or convincingly classify it as either productive, unproductive, or anything in between. The importance of such theorizing, however, is clear. As federal government does and will encounter inter-tier conflict, it must relate itself to its existence, and deal with its consequences. Moreover, the aims of normative federal theory are clear: to not just dissect federalism's properties as a political system, and argue for its implementation, but to provide existing systems with normative justification and aid in shaping their future policy. As federal government might then justify its structure by and shape policy in accordance with theory, democratic trouble is of real-world concern.

1.2. Democratic trouble

The misconstruction of the normative federal argument is interesting in multiple facets. For one, normative federal theory is symptomatic of the struggle liberal theory has in dealing with its critics, communitarian and other. Resolution is found in an institutional response, not in a theoretical one, or so it is fashioned. Moreover, the normative federal argument shows the consequences of the displacement or institutionalisation of the political, either partial or whole, from a system of government. The kind of conflict that runs endemic to tiered states proves to be the resultant of the constellated structure, focused on group representation. Institutional embedment of difference emphasizes and harbours difference, without giving expression to its political dimension. The pluralist federalism found in normative theory advances, seemingly, a vision of consensus, of 'well-functioning' federalism.[1] The tiered structure of federal institutions, however, creates a series of possible places of opposition and democratic and political conflict. Between tiers of government, both vertically and horizontally, disagreement is bound to arise. The diffuse nature of federal power-sharing, never entirely hierarchical, means inter-tier agonism is enduring and non-consensual. The existence of multiple, overlapping, democratic polities, dealing with both national and sub-national political issues, means political conflict is complex and not so much deliberative, as projected, as it is competitive, and issue-setting. Places of politics are closed; what could be political contestation of rights, and enduring discourse on the dynamic between cultural, territorial, and national groups and the state, remains entrenched within institutional limits.

While contemporary theories of federalism emphasize its representative capacities and its ability to incorporate pluralist societies into a functioning state, other characteristics are overlooked. Precisely the differentiated representation of federal government animates systematic political conflict. Instituting distinct political entities, legitimized by distinct democratic representations, possessing some territorial autonomy, empowers the confirmation of a political identity. Democratic representation and, some amount of, territorial autonomy institute a dynamic that confirms and empowers political community and identity. Liberal nationalist theories of federalism recognize this, to an extent, and even take this to be an antidote to secessionism and a

[1] Which carries on all throughout federal theory, e.g.: Filipov 2004, Filipov 2013.

true enabler of liberal values. In federal systems, political conflict is shaped by the federal dynamic. Discontent on a sub-state level is directed towards the central state, creating politically and electorally opportune opposition between national ruling parties and sub-state politicians. Institutionalized moral desert of representation enables sentiments of mis-representation as the interpretation of unfavourable decision making; the pluralism that renders federalism a just system complicates the relation between tiers. While multi-national states are, in theory, potentially aided by territorial autonomy, reality is more complicated.

1.3. Structure

How should the prevalence of democratic conflict between representative authorities in federal states be interpreted, in the light of contemporary normative theories of federalism? To assess federalism and the normative argumentations that have come to be associated with it, the dynamics of federalism at work must be assessed. First, I will, summarily, examine federalism qua system, its theoretical substantiation, and characteristics. Then, I move on to normative theories of federalism in recent philosophical theory, explicating various iterations of the liberal response to the communitarian critique, commencing with the exchange between liberal and communitarian thought, and its institutional resultant. Later on, I look into the role of democratic conflict within normative federal theory, making use of concepts from agonist theory to explain the phenomenon. To finish I, tentatively, set out possibilities of improvement, as contrasted to the main body of the thesis.

My these is twofold. Principally, I claim normative federal theory's claims on representation and pluralism misalign with federalism's institutionalization of difference, and I claim this has to do with the arguments applied in normative federal theory, particularly pertaining to identity and representation. The result of this misalignment, is both misunderstanding and misdirecting of the democratic dynamic of pluralist federalism. Secondarily, I claim tier-bound federal conflict is the resultant of the normative arguments made in favour of federal institutions that look to embed group rights and representation. Finally, I suggest amends to normative federal theory, and its institutional conclusions, based in agonist democratic theory could be of help in alleviating these tensions.

Throughout my argument, my focus remains with the liberal theories of federalism that came to fruition some 30 years ago, in the wake of 'A Theory of

Justice', fostered by the amends of liberal theory in response to the communitarian critique of the previous decades. My own response, subsequently, takes bearing within the same strand of political theory, supplemented by theory, which, in turn, has critiqued the lack of conflict within liberal democratic theory in a broader sense. Quite clearly, within contemporary political theory, the concept of federal government is inseparably linked to themes of democracy, political representation, liberalism, and pluralism. What is, in some sense, discourse on political institutions, thus inevitably turns into a more fundamental debate on the premisses of societal order. While my theses principally concern institutional structure, sparce attention must be devoted to these fundamental questions too.

2. Normativity and reality

2.1. Intent

Normative federal theory relies heavily on corresponding institutional theory: any normative argument on federalism starts out with some conception of its institutional reality. This includes both considerations of the initial covenant, in whatever shape, and the subsequent dynamic of the functioning federation. Naturally, the institutional side of federal theory has a descriptive element as well as a prescriptive one. The contemporary normative theory that is the focal point of this thesis, too, finds its bearing in works of comparative politics, looking to identify conditions and characteristics of and for successful federalism. Measuring success, quite obviously, is intertwined with normative considerations. This is inherent to the pragmatic nature of normative federal theory: it seeks institutional success, so it must account for institutional reality. The aim of this section is straightforward: to gain an understanding of the breadth of the concept that is the subject of normative theory, and to grasp something of the borderline between descriptive and prescriptive theory. Understanding institutional design is necessary in understanding the coming about of normative federal theory; had it not been for the perceived success of existing federal systems, the normative surge would not have taken place.

2.2. Federal success

William Riker's 1964 study '*Federalism: Origin, Operation, Significance',* examines successful and unsuccessful iterations of federalism, identifying conditions of success. His definition reads: "A constitution is federal if (1) two levels of government rule the same land and people, (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee (even if merely a statement in the constitution) of the autonomy of each government in its own sphere."[2] Riker takes the autonomy of the tiers of a political system to be the central element of federalism. Federalism, then, is a constellated structure that preserves some sovereignty of its constituent parts. The merit of this autonomy is clear: it preserves the representative sovereignty of territorially defined polities within the federation as a whole.

Aside from these identifiers, Riker believes there to be two predispositions that, taken together, constitute a necessary condition for successful federalism: "1) the

[2] Riker 1964, 11.

expansion condition and (2) the military condition."[3] They are to say that (1) those that offer the initial federal bargain strive towards territorial expansion, and (2) that those that accept the bargain do so because of some external military-diplomatic threat or opportunity. His empirically supported claim suggests mutual benefit among the prior territories to the federation is a key element in its success. Instead of a larger polity subdividing its authority among territorial minorities, abandoning a central government, the federation consists of previously constituted territories.[4] The timeline, however, of such claims is shrouded in difficulties, for these conditions may be fulfilled only by a far past. Clearly, the initial foundation and covenant of a federation, are of importance, as they rule future intra-federal dynamics. Their relation to continued politics and democracy is complicated; conceptions of popular sovereignty and communal pluralism remain dependent upon contingent historical facts.

2.3. Stability through division

Arend Lijphart's '*Patterns in Democracy'* mostly retains Riker's definition in its categorisation. The locus of political power, federal or unitary, central or decentral, is one of the factors taken into consideration discerning the characteristics of stable democratic government. Whether, and to what extent, division of power is institutionalized relates to the stability of systems of government. Lijphart is clear on the issue, associating the division of power, and thus federalism, with stability. Of note is his emphasis of the qualification of the component units of government as 'regional governments'; federalism is, foremost, a territorial division of power, the federation consists of territorially defined tiers of government. Lijphart, then, sticks to Riker's definition in this regard.[5] Naturally, these characteristics, as they are not too stringent, mean Lijphart perceives the qualification 'federal' to be relative. While some states are truly federal, most states have federal characteristics but fall short in some regard. Territorial division of authority, delegating some autonomy to regional government, may be absolute, or subject to constitutional provisions of some kind. As to the prevalence of federalism, Lijphart notes that it "tends to be used in two kinds of countries: relatively large countries and plural societies."[6] Representation as the *raison*

[3] Riker 1964, 13.
[4] Ethnic federalism is possible, but seldomly executed. Ethiopia was an example until 2018. This alternative will not be considered within this thesis.
[5] Lijphart 2012, 176
[6] Lijphart 2012, 183.

d'être of federal government, both in general and of territorial minorities, explains this prevalence.

2.4. Diffusion over division

Whereas the aforementioned conceptions of federalism maintain a simple definition of the division of power within the federation, it is obvious reality may concur. Both formally and materially, the dynamic may well be less clear. Daniel Elazar imagines the pluralistic character of federalism by visualizing its dynamics in a matrix structure. This matrix model of decision-making centres showcases a lack of hierarchy, illuminating the flexible nature of federalism, distributing varying amounts of political power on different issues among the tiers of government. Hierarchy is not necessarily stringent or clear, and while decentralization of power is the goal, central power does not necessarily preside.[7] "Federal polities are characteristically noncentralized; that is, the powers of government within them are diffused among many centers, whose existence and authority are guaranteed by the general constitution, rather than being concentrated in a single center."[8]

Besides its obvious capacity of instituting separate and possibly differing political realms, this dynamic of power-sharing institutes limits too; a necessary element, as pluralism is commonly perceived to be in need of containment, at times. If pluralism, or liberty, is threatened in any one of the parts of the federation, however, the whole can resolve these issues, not just through hierarchy, but through shared power too.[9] Central to the success of federations is, quite obviously, the maintenance of unity. Balance between polities is fundamental, barring dominance of one over the other, which is detrimental to the stability of the federation.[10] Elazar rightly remarks that the tensions within a federal arrangement mark its kind. Whether it be between nation and confederation, region and nation, or city and state: driving tensions reveal a great deal on the structure of a particular federation.[11]

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[7] Elazar 1987, 99.
[8] Elazar 1987, 34.
[9] Elazar 1987, 103.
[10] Elazar 1987, 170.
[11] Elazar 1987, 94.

Notably, federalism refers to both the process of diffusion and the process of unification of political power.[12] As Elazar emphasizes, this means "federalism must combine both structure and process."[13] Federal relations cannot exist only formally; they must have material consequences. Those consequences are plenty; shaping political and democratic dynamics. "The questions of intergovernmental relations which it produces are perennially a matter of public concern because virtually all other political issues arising in a federal system are phrased in terms of their implication for federalism as part of the public discussion surrounding them. In this way, federalism imposes a way of looking at problems that stands apart from the substantive issues raised by the problems themselves."[14] The federal structure does not just shape issues, it may well, in similar fashion, set the political agenda. Overlap between authority on subjects and political opposition between polities may shape issues to become divisive tools in achieving structural goals. These dialectical relationships determine the political course of the federation. Both maintenance of the necessary unity and the effective institution of the representation federal relations promise, exist only by virtue of the dynamic between tiers and polities. Thus, the argument goes, federalism does well in advancing and conserving pluralism and liberty, allowing differences to persist within the boundaries of the federal system. The federal polity is structured in such a way that these differences can flourish.

2.5. Autonomy and democracy

It is not just ideal federalism that normative considerations apply to. Many states are not wholly federal, coming short in one way or another. The Netherlands, for example, is no formal federation, as neighbouring Germany and Belgium are. [15] Its constitutional structure, however, is based on many of the same normative considerations commonly associated with federalism.[16] Moreover, international political development has seen supra-national organisations adopt federal features. The EU is often noted to have come to resemble a federation by the power of both its founding treaty and continued practice, consisting of sovereign nations nonetheless. The Union's

[12] Elazar 1987, 64.
[13] Elazar 1987, 68.
[14] Elazar 1987, 185.
[15] In Belgium's case only relatively recently, consolidated in a series of constitutional reforms from 1973 up to 2001.
[16] Namely, representation, subsidiarity and institutionalisation of difference.

interplay with the multitiered governments of its member states can well be said to build up to a federal multitiered structure; autonomy vested in each respective layer and a central authority, both executive and judicial.[17]

Thus, we can assert the qualification 'federal' is a sliding scale. Constitutions and political practice offer different guarantees of federal relations and historical exceptions and amends are commonplace. The historical reality of constitutions and institutions often means autonomy, as the central accident of federal tiers of government, is not absolute, either explicitly or implicitly. Institutions often fail to tell the whole story. Normative arguments surrounding federalism do not fail to apply in systems with non-absolute autonomy. Moreover, the normative arguments surrounding non-federal decentralization are much the same as the federal ones. Take, again, the Netherlands: while article 124 of the Dutch constitution states that provinces and municipalities have autonomy when it comes to running their own '*household*', the boundaries of this '*household'* are only constituted negatively. All issues unclaimed by central government remain within the autonomous realm of the municipality. If central or provincial government takes it upon itself to legislate, however, the subject is no longer part of the autonomous realm of the municipality.[18]

Finally, democracy is no necessary feat of federalism. The USSR, for example, is accepted to have been a federation, as per its constitution.[19] Still, the representative nature of federalism, especially in a normative sense, is undeniable. Elazar concludes the true meaning of American federalism was "to circumvent the problem of exclusive state sovereignty—in other words, to provide a modern alternative for organizing the polity on an even more democratic basis than that of the Jacobin state."[20] Taking sovereignty to be vested in the people, a plurality of governmental entities on various levels of territorial government is a way of delegating the power of the people more effectively and legitimately; its decentralized nature serving as an antidote to authoritarianism and a guarantee of popular reign. The public, necessarily and inherently republican nature of federalism is what sets it apart from its contractual co-

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[17] Cheneval 2015; Patberg 2017; Larsen 2021.
[18] I.e., no *Kompetenzkompetenz* with municipalities or provinces.
[19] Article 13 of the Soviet Constitution reads: "*The Union of Soviet Socialist Republics is a federal state, formed on the basis of the voluntary association of Soviet Socialist Republics having equal rights,* […]"
[20] Elazar 1987, 41.

governmental arrangement: feudalism. Federalism must be a *res publica*, going back to its original sense; and rely on popular sovereignty.[21] Democracy is part and parcel to contemporary normative theories of federalism, giving substance to both representation and autonomy.

2.6. Nationality

While cultural identity may predicate on many things, nationality stands out in both prevalence and political aspirations; within political theory, it is generally seen as the strongest collective identity.[22] The most prominent divider amongst federal states is their status as either multi-national or mono-national. Many large federations are multi-national, hosting a plurality of groups claiming national coherence. As these groups are generally territorially determined, a federal structure of government is a straightforward method of awarding distinct representation and a degree of governmental autonomy to national minorities within a large state. Federalism captures these nationalist dimensions within its inherently pluralistic institutions.[23] Differences among groups, ranging from language and religious particularities, to questions of public spending, are to be reflected in public governance, allowing expression of distinct national identities, all within the general bounds of the state as such. As unitary states tend to be plagued by calls for self-determination and recognition of national or territorial minorities, federalism is to resolve the lack of sovereignty experienced by these territorial groups. Awarding limited territorial sovereignty to national groups within the overarching institutions of a federal state imbeds the call for national representation within the state as such. Democratic processes inherit and formalize previous political dynamics. Plural, mostly dual, identities connect the individual to the state and respective sub-state representative government. While theories of national representation dominate contemporary normative federalist thought, weaker strands do exist, relying on a thinner conception of group representation and identity as a departure point, the proximity of government and the political relevance of local or regional community taken as valuable assets. The absence of national identity as central value in this second strand of normative federalism means there is a role to play for classic European conceptions of

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[21] Elazar 1987, 107.
[22] Demarcation of what constitutes a ‘nation’ and what doesn’t, is, rather obviously, troublesome. It serves little purpose to explicate this issue within this thesis.
[23] See: Miller 1995, 123-onwards; Bauböck 2000.

subsidiarity and localism.[24] A multi-national federation does not necessarily take a moral standpoint on the importance of group rights, only acceding territorial autonomy because of pragmatic reasons of stability and governance. Still, the functionality of 'pragmatic' multi-national federalism does premise upon the perceived value of group membership and national autonomy.

2.7. Foundation and covenant

Federations invariably rest upon a set of agreements and assumptions that determine its borders and arrangements. Aside from a canon of collected political culture, as shaped by a federal structure, federations are commonly governed through a constitution or similar document. Such a founding covenant can be the result of many things, ranging from a deliberate founding moment, to a collection of historical contingencies, the course of rivers rivalling well-meditated marriages and the territorial politics of previous empires in influence. The covenant that precedes federations, as the contract between previously independent states, or as the consolidation of previously unrecognized national claims, exercises its power in past, present, and future. As Honig rightly remarks: "Every system is secured by placeholders that are irrevocably, structurally arbitrary and pre-legitimate. They enable the system but are illegitimate from its vantage point."[25] Founding covenants, as a singular political act, are often, at least in part, an a-historical myth. As emphasized by Riker's military expansion condition many historic federations do not have a democratic 'covenant', and instead root in a pre-democratic age. Limited territorial autonomy is not just a characteristic of federalism, but of feudalism too. Especially in Western-Europe, many institutions of regional authority predate the founding of the modern state by centuries; representative federal structures only appearing in the age of democratic revolution. National culture and identity have been shaped by institutions for centuries, as these institutions have in turn been shaped by interaction too. A clear conception of the federation as an agreement between national groups is, in many cases, an illusion. While a-temporal covenants can be philosophically fruitful, the contingency of many federations does imply normative arguments must address the arbitrariness of their subject.

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[24] Gerhardt 2016, 149.
[25] Honig 1993, 108; As well as Honig 1991.

If present, the status of the initial covenant as a political act is singular. With Arendt, we can rightly speak of the "privilege of the generation of the founders" in this regard."[26] The free political act of grounding the union in principles of constitution, in the wake of revolution, is reserved only for the generation of founders. The contemporary sanctification of the US-constitution, for example, is, on the one hand, a blessing with regards to the endurance of the federation, and, on the other hand, an incidental anchor to the adaptive politics it originally set out to enact. Whether a 250-year reign was ever imagined is doubtful.[27] The failure to adopt a European constitution in 2006, to take a contemporary example, shows the hardship our age of mass democracy brings: it is quite hard to convince the public of the necessity of a constitution if a federation has not been formalized. Grounding principles, as a political act, is done much more freely before the institution of general democracy.

The federal covenant determines the size and power of the federal sub-structures. Emphasizing, once again, the shaping powers of federal dynamics and the power of a systems internal tensions, it is evident the covenant is fundamental to all federal politics. Contrasted to unitary states, in which general democracy rules, the boundaries and division of power are much more influential in a federation. It determines what groups are represented, and what ways of reaction and resistance to federal politics are available to what groups. The remainders, the issues disputed by more than one tier, materially and formally, disputing the locus of authority, are at the heart of federal politics. Of course, covenants themselves may provide avenues of resolution, such as a constitutional court. Still, the democratic nature of much of inter-tier conflict means opposition is likely to remain, and sometimes work its way up. Aspects of political dispute remain entrenched in covenants, not just providing legitimacy, but conserving and institutionalizing issues of identity and difference, introducing formalisation to otherwise dynamic and changing subjects.

2.8. Institutionalism

We can conclude it makes little sense to commit to a thoroughly stringent definition of federalism, as this inevitably turns into empirical nit-picking. Still, some definition is helpful to progress the argument and to make claims on the nature of multi-

[26] Arendt 1963, 232.
[27] Don't discount the Dutch: Riker 1957.

tiered systems of governance. Federalism, as defined within this thesis, is: '*A multitiered system of government that awards a degree of territorial autonomy to sub-state governmental entities, legitimized in turn by institutions of representative democracy. These governmental entities share power in a constellated structure, in which hierarchy may not always be fully formalized. The institutions of this system of government are commonly governed by a constitution or a similar normative founding document.*' The importance of the respective elements of this definition has become clear over the course of the past chapter. Territorial autonomy, partial or not, provides a degree of sovereignty to territorial groups, while the democratic constellation of the federal state provides avenues of representation and the voicing of particular minority-demands. The political, then, knows, multiple dimensions, all informed by their federal reality as either sub, or supra, in relation to the constituent polities of the federation. The founding document, finally, differs in political kind from the federal dynamic. Either as an agreement between groups, or as the substantiation of 'group rights', its influence in determining federal relations and tensions is not to be underestimated.

3. Normative fundamentals

3.1. Intent

As I have claimed, normative theories of federalism give too little notice to democratic conflict as a determinant of the institutional dynamics of federal government. The attitude towards representation and democracy adopted within normative federal theory roots in fundamental philosophical claims. As both the description and defence of federal government, it upholds assumptions on the individual, its needs and rights, and its relation with the state and other individuals. These assumptions derive from the liberal framework that has shaped its advent. It is, consequentially, necessary to demonstrate how these fundamentals, especially the exchange between Rawlsian liberalism and its critics, engender the dynamic of institutionalized pluralism within the federal state.

Federal theory is normatively rich: pluralism, shared power, representation, decentralization, and non-centralism all play into broader claims on the relation between individual and state, societal good, and institutional justice. The plurality of sites of political conflict brought about by the federal dynamic, in turn, determines a specific dynamic of the political. What is referred to as federal theory thus corresponds to a large share of claims made within political philosophy in general. Still, the core characteristics of federalism mean some strands of theory distinctively stand out compared to other governmental structures. Shared authority and territorial autonomy within larger states mean representation of territorial minorities and national groups is an explicitly federal theme. Moreover, competing democratic polities, serving separate goals, within the general structure of the state, bring in new perspectives on representation and identity. As the federal state embeds difference within its institutional structure, it elicits political opposition.

3.2. Normativity

Those suggesting federal theory should progress beyond the analytical approach of political science, argue, beyond pragmatic deliberation, federalism is preferable to other systems through its ability to express liberal values, and to marry these principles with institutional and structural representation of community and difference. The plurality of federal representation and the potential diversity between distinct sub-state governmental entities means liberty is effectively embedded in the structure of the state's institutions. The instituted interaction between different groups aids the

representative and democratic ambitions of the modern state. Claims on the moral preferability of federalist government have a clear consequence: dissolution of the federation presents moral regress. Secession, as the inherent antipode to the federation's stability, is thus rendered a clear threat to fundamental liberal values. This has two consequences. First, it means secession becomes a focus of normative federal theory, as the ever imminent threat to the successful and stable liberal federation. Secondly, it justifies, perhaps contra-intuitively at first face, the suppression of intra-federation resistance, for the demise of the federation presents a moral demise too. Thus, normative theories of federalism hide a paradox. While represented plurality is indispensable to the federation, too much of a good thing, so to say, undermines the federation. Authority must remain shared and dynamic; federal tensions must remain productive.

3.3. The communitarian response

With Rawls's 'A Theory of Justice', philosophical liberalism saw a strong revival in the 1970's. Subsequent works by Nozick and Dworkin signified a broader return to normative political liberalism.[28] Classically predicated on the rights and liberty of the individual, their theory looked to conceptualize structures to incorporate these liberal fundamentals into political life and the state. While their range was broad – Nozick can be categorized as libertarian, while Rawls upholds a radical these of redistribution – so was their commonality. Fundamental is the primacy of the individual and it's rights, in relation to larger society, and the focus on realising some theory of justice.[29] Theory, then, describes "the basic structure of society", and its implications for the distribution of fundamental rights and duties, by virtue of the institutions of the state. [30] "Taken together as one scheme the major institutions define men's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do."[31] This wave of liberal theory, naturally, found its critics, and response

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[28] Rawls 1971; Nozick 1974; Dworkin 1977.
[29] Rawls 1971, 25: "Therefore in a just society the basic liberties are taken for granted and the rights secured by justice are not subject to political bargaining or the calculus of social interests." Dworkin 1977, 322: "If someone has a right to something, then it is wrong for the government to deny it to him even though it would be in the general interest to do so."
[30] Rawls 1971, 6: "For us, the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements."
[31] Rawls 1971, 6.

from non-liberal theorists followed suit. Notably, communitarians aim their arrows at liberalism's premiss of the individual.[32] Their charge read that liberalism had wrongfully left societal reality behind, ignoring the inherent shared nature of life and culture. Communitarians took issue with the universalistic and the, in their optic, deserted self of liberalisms' universal claims "which started with the postulation of an extensionless subject, epistemologically a *tabula rasa* and politically a presuppositionless bearer of rights."[33] Their counter-offer, in which focus shifts from the individual as a primordial foundation, and the whole, in recognition of the individual's dependence on it, may preside over the individual, was argued to be in much better alignment with human nature; the liberals' liberty meaningless without societal structure. They postulated the shared nature of not just culture and embedment within a context of meaning, but the shared nature of goals and aspirations as well. The liberal individual, to the contrary, is empty, left in a world devoid of meaning and aspirations; in short, non-human.

Taylor, for one, picks on the derivative nature of obligations and ties within society, posterior to the individual and its rights, deeming it incongruent to human civilization as it has appeared over the millennia. Atomism, as he dubs political theory predicated on the individual, takes a mistaken view of the individual as self-sufficient as its foundation. While the individualist would concede, he argues, that society is necessary in our formation into an autonomously deciding being, the individualist would argue that the adult may no longer need society in all its apparitions. "I doubt whether this is in fact true; I doubt whether we could maintain our sense of ourselves as autonomous beings or whether even only a heroic few of us would succeed in doing so, if this liberal civilization of ours were to be thoroughly destroyed."[34] Thus, Taylor is quite clear: "The thesis is that the identity of the autonomous, self-determining individual requires a social matrix, one for instance which through a series of practices recognizes the right to autonomous decision and which calls for the individual having a voice in deliberation about public action. […] that there is an absurdity in placing this

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[32] Taylor 1985; Sandel 1998.
[33] Taylor 1985, 210. The term 'communitarian' has its shortcomings, most notably a lack of recognition by those commonly referred to as such. E.g., Sandel 1998, 186. I will make use of it nonetheless, as it does serve its purpose in describing a contra-liberal position on the relation between individual, society, and state.
[34] Taylor 1985, 206.

subject in a state of nature where he could never attain this identity and hence never create by contrast a society which respects it. Rather, the free individual who affirms himself as such *already* has an obligation to complete, restore, or sustain the society within which this identity is possible."[35] Sandel makes a similar point, pointing out the reality of 'conscientiously encumbered selves': "Certain moral and political obligations that we commonly recognize – obligations of solidarity, for example, or religious duties – may claim us for reasons unrelated to choice. Such obligations are difficult to dismiss as merely confused, and yet difficult to account for if we understand ourselves as free and independent selves, unbound by moral ties we have not chosen."[36] Little imagination is necessary to realise the consequences of either view for the fundamental relationship between individual, community, and state, and the respective consequences for institutional design. The governmental priority attributed to different individual rights, the range of individual liberty, the processes of culture and community, and the degree to which the state is involved in the active or passive upkeep of any one of these, differs greatly.

3.4. No atomistic starting point.

Our interest, as noted before, is with the liberal response to these critics. Communitarian theory beckoned clarity on the place of culture and community within the liberal framework.[37] The end of the twentieth century, and the apparent end of its grand ideologies and empires, made questions of national self-determination and the nature of the nation state resurface as living political theory.[38] The triumph of a liberal world order, predicated on liberty and justice, seemed closer than ever. Normative federal theory becomes part of the attempt to show liberalism's ability to deal with criticism and real-world problems: principally, the institutional recognition and embedment of the virtues of pluralism. The response is mostly framed as an explication; amends must not be understood as giving leeway to communitarian critique, but rather

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[35] Taylor 1985, 209.
[36] Sandel 1998, 188.
[37] Rawls's own revision of his theory in *Policial Liberalism* might be the most well-known case of amends. How much changes, can of course be disputed. E.g.: Honig 1993.
[38] Wayne Norman writes: "*Philosophers of my generation, (I was born in the same month as the Berlin Wall), for example, were raised on a steady diet of John Rawls, Ronald Dworkin, and Robert Nozick. But not one of the three major books by these authors from the 1970's has an index entry for 'nationalism' or a use of the word 'nation that is not synonymous with 'state'. The communitarian wave did little to redress this neglect, despite the fact that nationalism can be considered to be one of the most successful forms of communitarian politics in the modern world."*: Norman 2006, VII.

as consequential reasoning.[39] Will Kymlicka's work is exemplary of the turn in liberal theory.[40] Kymlicka takes issue with the characterisation of liberalism as a solely individual enterprise, supposedly shaped on a solipsistic unencumbered self, taken from Rawls's original position: "[…] that liberals are denying the undeniable, neglecting the most readily apparent facts of the human condition."[41] Still, Kymlicka acknowledges the lack of attention previously devoted to group membership within liberal theory. His understanding of the relation between the individual and the need for the liberty to devise and revise aspirations and projects, giving meaning to life, is indispensable in grasping his subsequent apprehension of federalism as means to an end in the liberal project. If the state is to guarantee the necessary liberty and provide the necessary resources, the value of group culture and community necessitates societal pluralism, guaranteed in turn by some institutional plurality.

While the aim for people to be able to "question and revise their projects and commitments" is rightfully seen as fundamental to liberal doctrine, the subsequent presumption—'abstract liberalism', as Kymlicka dubs it—that this deliberation and revision must take place outside of society is not. Naturally, evaluating and questioning one's projects and intentions in life, occurs from time to time, but does not necessitate going beyond society and culture. A claim of cynical relativism often follows the claim of abstraction; liberalism's claim of individual determination is interpreted as a dismissal of reason's role in the pursuit of the good, subjectifying it's definition. Liberalism claims the opposite, however, Kymlicka argues: "If abstract individualism or moral scepticism were the fundamental premiss, there'd be no reason to let people revise their beliefs about value, no reason to suppose that people are being made worse off by being denied the social conditions necessary to freely and rationally question their commitments."[42] If conceptions of the good are pre-social, questioning is rendered useless.

It is quite clear that the combination of this deliberative liberty as to one's interests in life and the fundamental equal standing of all mankind, sets the state's task in ensuring all have the required liberty and resources to deliberate on and pursue their

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[39] Not unreasonably so, see, e.g.: Nozick 1974, 323-325
[40] Take already the title his influential "Liberalism, Community, and Culture.": Kymlicka 1992.
[41] Kymlicka 1992, 2.
[42] Kymlicka 1992, 18.

aims and beliefs. The individual's ability to devise goals and aims in life, amend these, and deliberate freely on the pursuit of these goals, is what liberalism means to establish within society. If, indeed, the individual takes community and a place within a cultural group as fundamental in life, he must be able to participate as he pleases. Whereas communitarian theory supposes group-bound goals and direction, this renders community a fundamentally instrumental phenomenon. "It is not that community is unimportant to the liberal, but simply that it is important for what it contributes to the lives of individuals, and so cannot ultimately conflict with the claims of individuals."[43]

3.5. A pluralist solution

The plea for the institutionalisation of (multinational) pluralism derives from this instrumental conclusion. Federalism institutionalizes this principle, and gives expression to the valuation of the representation and enactment of group culture and rights. Aside from the institutionalisation of liberty, democratic federalism carries more pragmatic benefits. While liberal pluralism has its lower limits, shielding the individual, existent culture may still attempt to transgress these boundaries. The 'pacification' of ideology, through representation, may progress liberalism's cause, nationalism in particular. "Democratic federalism has domesticated and pacified nationalism, while respecting individual rights and freedoms. It is difficult to imagine any other political system that can make the same claim."[44]

Minority rights come into play, too; cultural membership, as a primary good, may well be tread upon by the disadvantageous position minority cultures suffer. Protection, then, is in order. External protection of group self-determination does not mean internal violation of individual rights is either a realistic threat or permissible on the same grounds as awarding external rights. Of course, tension between these external and internal dimension can arise. Minorities may claim exemption from rules or dismiss authority over internal decision making. The call for internal restriction, however, is seldomly heard compared to the call for external protection, or so Kymlicka claims.[45] Kymlicka's assessment of secession as the great threat to federalism is reflected in his proposed institutional answer. "But I think democratic federalism only works (or best works) to inhibit secession when secessionist political mobilization is allowed. (Indeed,

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[43] Kymlicka 1992, 140.
[44] Kymlicka 2000, 213.
[45] Kymlicka 1995, 35-42.

federalism is only democratic if it allows this.) Minorities will only find TA (*territorial autonomy)* an acceptable form of self-government if they have the right to freely debate their future, including freely debating a range of options from assimilation to secession."[46] Playing with fire, then, is necessary. In that light, Kymlicka understands the ever-present tension of federalism as both catalyst of and antidote to destructive and splitting nationalism.

3.6. A well-designed federal system

In the wake of Kymlicka's reprisal of communal culture others follow suit. With the aptly named "*Towards a Philosophy of Federalism*", Wayne Norman lays the groundwork of a group right approach to federalism, adopting a distinctly institutional approach.[47] Equal opportunity to pursue a conception of the good may necessitate active enablement of continued shared cultural identity by the state. The difference between individual and collective rights becomes apparent in their relation with institutions. The enactment of individual rights depends on interaction and other individuals; the enactment of collective rights remains abstract until represented in political institutions. The link between personal and group identity is not just decisive over the course of many lives, but a determinant of experienced political representation too. Representation and institutional authority allow expression of otherwise non-tangible rights.[48]

Identifying a "well-designed federal system", and establishing it is the necessary condition for the realisation of the federal virtues imagined. To Norman, this means going beyond the pragmatic considerations that tend to reign the determination of federal arrangements.[49] Norman employs Rawls's overlapping consensus theory of justice as the framework to review the status of federal arrangements, which predicates a consensus on a liberal conception of justice as a condition for stable social union, necessitated by the inevitability of societal pluralism. Diversity of reasonably comprehensive religious, philosophical, and moral doctrines, to Rawls, is a permanent feature of the public culture of democracy.[50] Somewhere between a monolithic conception of shared identity and citizenship, and the loose sand of complete pluralism,

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[46] Kymlicka 2000, 222.
[47] See also: Weinstock 2001.
[48] Norman 1994, 79.
[49] Norman 1994, 82.
[50] Norman 1994, 86-87 ; Rawls 2005, 36.

lies the fundamental contract of overlapping consensus. "First, given the fact of reasonable pluralism—the fact that leads to constitutional government as modus vivendi in the first place—liberal principles meet the urgent political requirement to fix, once and for all, the content of certain political basic rights and liberties, and to assign them special priority. Doing this takes those guarantees off the political agenda and puts them beyond the calculus of social interest, thereby establishing clearly and firmly the rules of political contest."[51] The principles of justice, conceived politically, that constitute the overlapping consensus are, of course, moral by nature; this alone elevates it above a mere modus vivendi.[52] A 'modus vivendi', then, is not enough for a federation to remain; a federation "in which pan-federal identifications and solidarity do not develop will remain inherently unstable."[53] While the fact of pluralism may drive the establishment of a federal government, pan-federal overlapping consensus is needed for federalism to be more than an unstable contract.

What is agreed upon is normative in nature, not just the pragmatic outcome of a necessity to co-exist. Thus, as Norman realises, there are multiple implications for the federal agreement. For one, well-designed federalism is taken to mean arrangements that appropriately embody the existing situation, embedding difference and agreement. The a-priori federal agreement then, is of the utmost importance to the success of the federation.[54] Even accounting for the obvious self-correcting capacity of representative democracy, this moves the federal process outside the federation. Prior politics determine the moral success of the federation. The concept of political justice, the subject of the overlapping consensus, is not the product of the federal system, but rather its creator. The continued federal bargain, then, exists only as the product of the overlapping consensus. Norman's application of Rawlsian overlapping consensus reveals a great deal about the political nature of the federation he envisions. Norman envisions a smooth federation; its institutions predicated on consensus, coherence, and cooperation. Emphasizing the amendability of institutions to suit the circumstances at hand, 'well-designed' is a normative concept, making moral claims.[55] Preventing

[51] Rawls 2005, 161.
[52] Rawls 2005, 147.
[53] Norman 1994, 87-88.
[54] See, again, §2.7.
[55] Norman 1994, 82.

secession, and even the call to it, of course, are a fundamental element of this stability, and thus a challenge in design.[56]

As the overlapping consensus implies, federal arrangements will differ greatly between countries. What is agreed upon depends on the situation at hand. Normative federal theory, then, must be pliable to a variety of situations. "Nation-building' in a modern democratic federation—one that is not forged by war or coercive homogenization—is a matter largely of visionary anticipation of federal frictions, combined with pragmatic, cooperative measures to smooth them out."[57] Norman warns of a "platonic form of federalism", stressing the need for a more practical approach towards federal theory, systematizing "intuitions about just and appropriate federal relations and to elicit their implications for more complicated cases."[58] The deliberation that precedes societal agreements is of particular interest to our federal philosophizing. While Rawls emphasizes that "membership in our society is given, that we cannot know what we would have been like had we not belonged to it", federal agreements differ, by principle.[59] In and of itself, each federated government carries within itself the possibility of dissolution, as it once carried the possibility of federation.

3.7. Fairness and homogeneity

The federalism of Kymlicka and Norman focuses on shared power and partial autonomy as drivers of the incorporation of group rights into the liberal-democratic state. An interesting criticism, and amend, is voiced by Helder de Schutter, who argues for "an alternative rationale" that "understands federalism as embodying principles of fairness in a society marked by a pluralism of national identities."[60] Precisely the pluralism of national identities, offering representation of both federal and sub-state identities, works to accommodate identification with both or one identity. Differing identification on a sub-state level, then, is resolved through federalism's refusal to recognize only one group, thereby providing a fair solution. De Schutter thus argues that federalism, "on cultural identity grounds" is "preferable on grounds of fairness both to secession and to a unitary non-federal state." The workings of federalism, so to say,

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[56] Norman 2006, 170. "indeed obviating even the *desire* by national minorities to want to secede—is thus a central design challenge".
[57] Norman 1994, 92.
[58] Norman 1994, 95.
[59] Rawls 2005, 275.
[60] De Schutter 2011, 168.

function as an arbiter between co-existing and competing institution-bound cultural identifiers. Key to his understanding of federalism, then, is the acknowledgment of the non-unitary identity of the federal citizen.

Along with Norman and Kymlicka, de Schutter takes multinational federalism to be the basic case, leaving sec territorial federalism aside in his normative assessment. The national identity argument leads his reasoning. Kymlicka's arguments on liberal government and its relation to group rights, he argues, derive from a "monolithic and homogeneous picture of nationhood."[61] While a culture is likely to be internally pluralistic, its substance is recognizable. This is an oversimplification of a more complex reality in which cultures overlap, divert, and lack recognizability as such.[62] Moreover, national identification may be dual: identity relates to both state and sub-state nationalism. Members of a national group may, to complicate matters, disagree on dual-identification with a secondary national identity. These shortcomings render Kymlicka's account of national identity unable to ground federalism's attraction beyond a mere united force of essentially loose national groups.[63] Normative justification may indeed require a more profound conception of national identity.

Norman's Rawlsian approach, taking to overlapping consensus as a founding principle, adopts a similar stance towards the external status of national groups within the federation. While the federal bargain, the negotiation between groups, has a pluralistic dynamic, the representation of the group is monolithic on that level, or so De Schutter argues.[64] The groups that inhabit the multinational federation lack internal pluralism as far as Norman's federal considerations are concerned. Sticking to Rawls, the original position relative to the formation of the federation employs only groups, not individuals. De Schutter considers this to be not just inconsequential but unjust: "[...] it is not clear to me why assuming a shared identity would be oppressive and unjust at the federal level but not so at the sub-state level. Groups tend to be internally divided with regard to the importance of identity and with regard to the question whether or not

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[61] De Schutter 2011, 172.
[62] De Schutter is, of course, far from the first or only author to voice this kind of criticism. Take, for example: Hobsbawn 2012.
[63] We could well argue De Schutter, and many others, are quick to overlook the international and economic advantage of united government.
[64] De Schutter 2011, 177-178.

secession is desirable."[65] As Schutter rightfully notes, theories of multinational federalism tend to take federalism as "*essentially* and *merely* a mechanism to provide sub-state nations with self-government." [66] Normatively, however, this does not account for the absence of secession, and roots in the monolithic interpretation of identity critiqued before. Dual and non-conforming identity is left unaccounted for, even though the federation may do well in protecting precisely these identities.

The iteration that it is "the existence of a people at two levels" that characterizes federalism, assuming a federal people and the sub-state national groups both have national characteristics, is at the heart of the argument.[67] "Federalism is typically something in between a unitary domestic nation-state and an international institutional structure. Citizens in federal states are simultaneously citizens of two peoples who each exercise sovereignty: a federal people and a sub-state people."[68] This notion of pluralistic national identity complicates the conception of multinational federalism as a contract between nations, or other groups; necessitating consideration of individuals to realize federalism as a system of fairness. Because federalism means recognition of national identity is not just shared, but distributed equally, through constitutional means, it advances fairness and political justice. [69] This, to De Schutter, normatively grounds federalism as superior in terms of fairness to unitary government and, importantly, to secession.[70]

3.8. Normativity considered

I have now shown how federalism is fashioned as the institutional answer to the communitarian challenge to philosophical liberalism. In response to the supposed lack of acknowledgment of the value of community, group membership and culture to the individual, a strand of liberal literature explicating these issues followed, paying attention to the dynamic of individual, group, and state. Normative federal theory thus includes emphasis of the individual's ability to be part of national and cultural groups within the bounds of the liberal state. Pluralist institutions in a federal society principally enjoy instrumental justification: institutional embedment of (national)

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[65] De Schutter 2011, 177.
[66] De Schutter 2011, 167.
[67] De Schutter 2011, 177.
[68] De Schutter 2011, 168.
[69] De Schutter 2011, 182.
[70] De Schutter 2011, 169.

groups, serves to complement the enactment of individual liberty. This instrumental conception of group membership shapes the conception of the state. The institutions of the liberal state must ply to provide adequate resources for community to flourish. It is the context-providing capacity of cultural membership that renders it a primary good. When embedding the value of identity, national or other, and cultural membership within a, Rawlsian, framework of justice, considering it a primary good, justice necessitates its fair distribution.

Great weight is attributed to the value of democratic and institutional representation of existing groups within the bounds of the federal state. And while the nature of these groups may evolve, naturally, over the course of time, they acquire a formal character: by the power of the initial federal covenant, and by the reality of being institutionally determined in territorial and institutional size. The role of the foundation and subsequent covenant that predate the federal state, therefore remains of great conceptual interest. Interestingly, the functioning of the federal state, as the safekeeper of pluralist society, is defined in terms of stability and consensus. While tensions are deemed ‘all-telling’, per Norman, a well-functioning federal system should, by itself, be able to deal with and resolve these tensions, presumably through the means of representation and democratic process and by virtue of the principles of justice that underpin the founding covenant. An underlying assumption then, is the functioning of representative democracy as an equalizing and streamlining process. Through its means, the federation is enabled to turn differing sentiments into realisable policy and sufficient consensus. In a way, the federal consensus is predicated on agreed disagreement; pluralism, however abstracted, is at the heart of the federal covenant. Democratic and institutional representation is not so much means, as a goal by itself. Spaces of politics, as sites of contestation, are pushed out of the federal structure. The moment of foundation, principally, can be seen as a moment of political action. While theory emphasizes the ability of the pluralist state to offer multiple sites of identification and representation, tension between individual liberty and the institutionalisation of group rights lingers within. Foremost, democratic deliberation is instrumental in its ability to channel the demands and tensions of pluralist society, working to establish a well-functioning federal structure, adhering to founding principles.

4. Conflict, secession, and tension

4.1. Intent

It has become evident by which justification federal government is proclaimed preferable over unitary government. Retained autonomy and multi-tier representative government enable institutional representation of distinct groups and protect territorial minorities within the state. As a result, federalism mitigates the representative and political trouble of the unitary state, all the while marrying rights-based liberalism with institutionalisation of group culture. Multiple decision-centres, not always in definite hierarchy, sometimes kept in check by courts of law, diffuse political challenge and allow for differentiation. Strongly connected to theories of deliberative democracy, these normative theories picture a politics that keeps swords sheathed and works through conflicts by institutional embedment. The well-designed federal state disarms secessionist movements, alleviating the splitting effects of single-polity government; the existence of multiple polities institutionalises pluralism, pacifying it through the means of democratic government and the rule of law, all while embedded within the state as such. These arguments themselves, however, enable a dynamic of emphasis, difference, and cause an unproductive variety of political conflict. This chapter serves to explicate this part of my these, drawing upon agonist democratic theory, to voice arguments on conflict, secession, tension, emphasis and democratic distortion.

4.2. Democracy and conflict

Democratic conflict is part of any democratic state. Representation and deliberation inherently involve a clash of convictions and interests; a pluriform public sphere generally reflects this principle. In this sense, the relation between federal government and democratic conflict is unsurprising, non-descript even. The way in in which democratic opposition is appreciated, institutionalized, suppressed or stimulated, differs, however. Inter-tier conflict, moreover, differs from ‘simple’ democratic conflict; opposition between hierarchically related tiers complicates the dynamics of the federal state, through distinctly federal issues such as majority/minority counts and the pluralist identity of the federal citizen. The continued emphasis of territorial representation and partial autonomy as a driver of pluralism and representation within normative federal theory is inseparably linked to democratic conflict. Moreover, the normative focus on secession, and the related right to sovereignty of ‘nations’, mean normative theories of federalism under-theorize the link between sub-state representation and federal tension

and conflict. Instead, conflict is theorized as potentially destructive. As democratic conflict is an inevitability, normative federal theory must address it from within; a failure to do so undermines its claims of representation and distributive justice. The tensions at the heart of non-secessionist conflict are part and parcel to multi-tiered representative government. These tensions must be addressed, not just for a federation to remain stable and politically sustainable, but for normative theory to cover the extent of its prior conclusions. Moreover, the quest for 'well-functioning' federalism, in and of itself involves evaluation of the internal political dynamics. The pluralist dimension of federal government must be considered too, as the dynamic of inter-tier conflict involves the adaptation of pluralist identities to identity-bound issues and polity membership.

The deliberative, consensus-based model of democracy that underlies the institutionalized pluralism normative theories of federalism mean to establish, through instrumental justification, is to provide the representative resources to both the individual and societal groups, be it national groups or not. Premised on individual liberty, it is to guarantee access to rights and allow for the upkeep and continued flourishing of the situated life of the federation's citizens. Representation within normative federalism is institutional: the extent of sub-state sovereignty, the territorial definition of polities, and the conditions of change are rigid, and found in a constitution or similar document. Principally the subject of the federal bargain, contestation is prior to the federation, or thoroughly formal. The political possibility of redefining, or refounding, the fundaments of the federation is out of reach to democratic deliberation, which, more than anything, entails the process of constituting and legitimizing pluralist consensus within the federation. If we contrast the consensus-based model with a more agonistic approach to democratic conflict, the differences are apparent. Taking continued political conflict and contest as productive drivers of redefining and augmentation, the 'closing' of spaces of politics is inherently problematic. Honig, who emphasizes the persistence of 'remainders' as the subject of political contest, links the absence of "(re)founding, augmentation, and resistance" to the 'closing' of spaces of politics.[71] Federalism, along the normative arguments studied in the previous chapter, removes most possibilities of contestation. The constitutional predication on identity-

[71] Honig 1993, 159.

bound liberty, and its societal benefice, leaves pre-federal bargaining a pure pre-condition to federal success and pluralist consensus. What remains, is subject to the avenues of contest that remain within the federal state: most importantly, inter-tier conflict, as I will substantiate over the coming paragraphs. This distorts the possibility of contest, through the issue-setting and defining character of federal structure. Of course, political contest is difficult to conceptualize within the bounds of the state. As Honig writes: "The perpetuity of contest is not easy to celebrate."[72] Important here, however, is the confirmation that while the 'closing' of spaces of politics is commonplace, contest remains, and, through institutional means, disrupts projected smoothness.[73] Even if supressed, contestation will arise, apprehending what is left to take, pushed out by institutional reality. Honig's criticism of Rawlsian theory, is precisely this, the displacement of political from society and the state, for everything becomes entrapped within the rationale of justice and fairness. The principles resultant of the original position determine the administrative course of action. What remains to be disputed lingers and questions the system itself.[74]

Key to the agonist approach is the finding that while fundamental disagreements may be fundamentally irresolvable, their dynamic, within the public realm, can be a force for good. A continuous competition of ideals and subsequent policy proposals enlivens democracy; giving substance to otherwise empty proposals and promises. "Democratic turbulence disturbs established commonalities: it shows them to be complex contrivances; it brings out elements of contestability within them; it exposes possibilities suppressed and actualities enabled by contestable settlements."[75] Political contest allows for continued augmentation of otherwise accepted or disputed norms and agreements, its stimulating allowing political action to continue. Whether political institutions effectively support these dynamics, is of principal importance.[76] If true democratic contest is allowed to flourish, it can deliver on its potential. Dominance of one over the other, however, is due to prevent any benefice. Critical, then, is the absence

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[72] Honig 1993, 14.
[73] Honig 1993, 13-15.
[74] Honig 1993, 130, 135.
[75] Connolly 1991, 200.
[76] See, e.g.: Mouffe 2005, 28. "*Meeting the challenges posed by the gap between actual and ideal deliberation requires that an adequate institutional design of a democratic system should not only try to devise and implement sites and moments of actual deliberation. It should, at the same time, provide the means to expose the partiality inherent in all political decisions*;"

of uniting, higher-order rule, within the political realm. Multi-tier democracy could, in some sense, be said to be an institutionally expansive variant of this phenomenon. Dubiel, on cultivated conflicts, rightly remarks the inobservant nature of conflict participants, in respect to the reality of societal conflict. “The participants in such conflicts typically will not be aware that, over time, the series of compromises they reach forms a moral resource that maintains and preserves their society.”[77] A these we may entertain, in this regard, is that it is precisely the conflict itself that keeps the federation together, its particularities building up to a dynamic whole of scar tissue. Contradictory, of course is the principled reliance on a pre-political just order, as grounded in the federal constitution and its normative foundations.

4.3. Coming apart

Secessionism, as the ultimate expression of federal dissent, severs the ties of the federal covenant, choosing sovereign representation over association. Whether nationalist, choice-bound, or in need of just cause, secession came into theoretical focus, along with federalism and nationalism.[78] Clearly, separatism is a threat to the federation; the whole consists only of its parts. Its safeguarding function is straightforward: as a fire-exit, secession serves as a reminder of the need to keep a federal state balanced and beneficial to its constituent parts. If representation is inept, secession looms. While secession, as the ultimate antipode to federation, is inevitably opposed to federal benefice in normative theory, its central position is unjustified. Federal conflict only seldomly equals secessionism; opposition between central and decentral government instead takes place within the bounds of the federal relation. Staying or going is not part of conventional political discourse. Emphasis on representation and the continued flourishing of group culture and community, as the backdrop to individual liberty, frames a dysfunctional state as prone to breaking apart.

Fostered by both the insight that the circumstances under which something is allowed to come apart are all-telling, and the historical evolution of multinational states, plagued by civil wars and rivalling unitary and secessionist movements, federal theory emphasizes the looming threat of secession.[79] Historically, secession has been seen as

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[77] Dubiel 1998, 211; Gauchet 1980.
[78] Buchanan 1991; Buchanan 1997.
[79] I.e.:“[…] *knowing how something comes apart, or is allowed to come apart, tells us much about the how or why it is put together”:* Norman 2006, 171.

the threat to federations. Mill, for one, is quick to emphasize its ever-looming threat. Even disagreement on policy, he thinks, is a possible cause for dissolution. Mill's three conditions of federalism reflect this conviction: sufficient mutual sympathy, interdependency of the sub-units, and a durable balance in power between sub-units, to Mill, constitute the basis of stable federalism. Unsurprising is his insistence on the need for an independent umpire to safekeep the constitutional limits of the federation.[80] Here, we must come to realize the differences between Mill's age and ours. Very few instances of democratic conflict between tiers of federal government are the direct result of a political drive towards secession. This has several reasons, the first of which is simple effectiveness. Western states have strongly consolidated over the past century or so. Combined with the growth of government and administration, the dissolution of states does not just seem politically unlikely, but has also grown more destructive. The complication and growth of governments has led to a far more extensive legal and judicial entanglement of states.[81] The legal and judicial entanglement of not just states themselves, but the international order as well, means dissolution will be more complicated and far-reaching in its effects. The early steps towards German unification of Mill's time, do little to explain the unity of Germany now.

Dismantling federal states is due to be a messy affair, bringing harm to society and economy.[82] Continued expansion of the international framework of human rights and the distributive powers of the international and EU legal framework, have provided many previously disregarded territorial minorities with guarantees of protection. True secessionist movements have lost strength due to globalisation and its homogenizing cultural effects. Economic dependence of sub-state governmental units on state structures and institutions is so overtly clear that secession is no serious option.[83] Remaining and newly appearing tensions relate to political issues that are at their core no more than questions of disagreement, terminated only by hierarchical relations. Their

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[80] Mill 1861, 166.
[81] Stoppenbrink 2016, 214.
[82] Brexit serves as a harrowing example. While indeed a case of 'light' secessionism, its can also be fashioned as an argument against the EU's status of 'federation', for the possibility of unilateral exit is a example of the retained final sovereignty of member states.
[83] Hobsbawn turns to the increased uselessness of separatism in our globalized world for an explanation; embedment in an international context renders independence much less impactful. Economic policy, bound up in the nineteenth-century conception of the state, has become an international affair: Hobsbawn 2012.

solution is not so much secession, as it is political deal-making, or in some cases even the re-negotiation of the federal covenant and subsequent dynamic that underlie the state as a whole. Secession, though, is not on the table. Even seemingly intense instances of inter-tier conflict can remain within the bounds of the general federal structure. To reject a government's policy, is not the same as wholly rejecting its institutions and existence.

Secession is often linked to national self-determination; the quest for a 'nation' to establish self-government. The right to self-determination has been extensively confirmed, the UN Charter as the most prominent example, even linked to the individual value of group culture and membership.[84] Regardless of the existence of a 'right to secession', motives to secession are found in the national sphere, be it self-determination or escape from suppression.[85] Still, doubt can be cast on the present-day potency of nationalism, within the context of the liberal state.[86] While the multinational state is expressly presented as the noted case for federalism, allowing national groups a desired degree of autonomy and self-governance within the bounds of the pluralist federation, loose definitions and opportunistic politics make 'nation' an often incomprehensible subject. Distinguishing 'nation' from 'regional' identity or an unusually coherent local polity quickly turns arbitrary. The nation-state is not the determinant it has at points in history been. Moreover, national identity is, in most cases, not as homogeneous and distinct as it may have once been. Culture, religion, and language, too, have globalized, and lessened the value of independence and sovereignty; the world cannot be kept out.

Political conflict within federal systems, is, predominantly, non-secessionist by nature. It tends to take the character of inter-tier tensions, brought to live democratically; all in relation to the inherent bargaining dynamic of federal systems, as part of the constant negotiation on authority, sovereignty and political boundaries. On the one hand, inter-tier conflict has the potential to be disruptive to the functioning of the federal state, no less so when non-secessionist, as is reflected in the focus on 'well-functioning federalism' in normative theory. On the other hand, conflict is part of the democratic functioning of the federal state. Conflict within federal states is commonly

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[84] Margalit & Raz 1990, esp. 451-452.
[85] Buchanan 1991; Buchanan 1997.
[86] I share some of these doubts with Hobsbawn 2012, 177.

established democratically: tiers of representation rise to opposition. Disobeying federal legislation, dwindling respect of the constitution, growing distrust of statewide representative democracy, etc., disrupt federal consensus, without necessarily carrying the potential of secession. For a sub-state entity to feel the state disregards their interests, need not be related to secessionist thought, especially when the federation has been in function for an extended period of time. Needless to say, non-secessionist dismay is not subject-specific, capturing both the fundamental and the trivial. Finally, if we recollect Elazar's remark on shared power, realised through territorial decentralisation, we can easily imagine complication does not just occur on a vertical, but on a horizontal level too.

4.4. Affirmative opposition politics

Distinguishing a sub-state political community with formal standing, nation or not, opens the possibility of opposition and disagreement between this entity and the state as such. Juxtaposing the two is a common theme in lower tier political rhetoric. Eliciting difference between regions brings sentiments of superiority and questions of financial and political dependence to live. Some contribute more to national finances, while others contribute less, some suffer more from policies than others. Groningen, the northernmost province of the Netherlands, rapidly became a driver of national economic growth, after the discovery of earth gas deposits in the 1950's. Pumping away at the subterranean gas deposits, however, as it now turns out, has depleted the stability of the soil, leading to the recurrence of local earthquakes. It has led to political antagonism between the Groningen population and the national government, initially opposed on the exploitation of the profitable gas reserves. Now, as exploitation has ceased, tension lingers, leading to substantial trouble implementing national policy. Similar issues surface in many regions. The province of North-Brabant, for example, was intent on remaining uncooperative in the execution of these nitrogen reducing policies as adopted on a state level. As controversial, and sometimes exploitative, policy is often executed on a national, or federal, level, the antagonistic dynamic features as opposition between local factions and national government. Sentiments may well turn against overhead tiers of government, deeming political issues unrepresentative top-down governance. These sentiments are not simply territorially bound: resistance against national policy in one decentral polity, often sparks solidary sentiments of resistance against national government. The Groningen issue, for example, sparked a broader debate on the

seemingly foul relationship between national and regional government and representation. As much as federal decentralization may add to the representation of territorial minorities and sub-groups, it can foster resentment, conflict, and resistance too. Recent national politics has seen newly founded parties capitalizing on these sentiments, turning populist rhetoric against so-called national political elites, claiming representation of overlooked regional minorities. The dynamic of multi-tier governance is turned on its head, as the representation of its 'lower' layers is instead moved up the decentral, ladder gaining national traction. The ascending path of political conflict is remarkable. Inter-tier conflict becomes, in a meta-motion, the determinant of national political discourse. With little regard to electoral proportionality, an issue-bound staircase is provided to lower-tier opposition.

By establishing or incorporating the political identity of the substructure, the federation acknowledges the status of the substructure as politically distinct and deserving of representation. While arguments used range from effective individual liberty to national self-determination or local legitimacy, the result remains the same: institutionalisation of political distinction. The decentralized nature of the federal state means a number of polities exist. These polities share representation, a ruling institution, and thus share a political agenda and a distinct political discourse. While some issues are arbitrary, lacking identity-related content, other issues directly play into opposition towards other governmental entities. Democratic conflict with higher tiers of government, in particular, emphasizes a distinct political identity. The issue-setting and issue-defining capacity of the federal structure, as mentioned, inevitably turn politics federal. Lower level representation benefits from disagreement with higher tiers of government; conflict is an opportunity to advance not just political goals but to showcase the value of the tier itself. For if the polity did not exist, how would it's position be voiced?

Opposition to central government is itself a political method of emphasizing the representative value of decentralized representation. The federal structure thus does not just mean issues are phrased and advanced in a federal way, but causes political disagreement to become a confirmation of federal beliefs. Representation of territorial minorities is, in this regard, self-confirming. Once a political institution has been established it is unlikely to support its own uselessness, let alone propose its own demise. The belief representation matters fuels sentiments of opposition to higher tiers

of government. Sentiments of misrepresentation and mistreatment tend to linger; they are notoriously hard to combat. Moreover, identification of particular issues with a dynamic of opposition between tiers renders a position on these topics a marker of identification with one party against the other. This is key in understanding the relationship between normative arguments and inter-tier conflict: the conflict itself confirms the position that distinction and representation is just and fair, and of significant moral value. This position, of course, is part of the, philosophically, prior and fundamental federal covenant. In this sense, the covenant becomes the confirmation of its own potential demise. There is a clear difference, however, between the covenant, as a political act, and the later reprisal of its arguments, voiced as rights.

The federal covenant remains at the heart of the dynamic of emphasis and institutional representation. As institutions determine the makeup of democratic tensions, the dynamic of change within cultural and national groups, the normative subject of the covenant, remains caught up in pre-federal politics. The status of the federal constitution, itself the result of political bargaining, gives bearing to arguments of desert and claims of rights. Political discourse on these issues is then immediately framed as non-political, simply due to the formal and judicial nature of constitutional rights and their amendment. Seeing as distinction has been subject to a degree of sanctification, as any federal constitution has, its reprisal as the subject of politics is rendered an affront to the just nature of representation and juridical distinction of cultural and national groups within the state. Moreover, it is the founding document that enacts the principles of justice that underpin the smooth functioning of the federal state. Thus, the self-confirming nature of inter-tier conflict works to entrench the a-political status of the covenant that has institutionalized its democratic tensions.

4.5. Context and paradigm

The boundaries and divisions of states and polities past, shaped by historical contingency, determine the polities of today. Years of shared governance and representative emphasis will knead a polity into coherency. Communal political representation and shared governance impact the lives of citizens in a pervasive manner; shared democratic institutions dictate a shared public life. Even without deliberate nation-building, let alone any policy designated as such, boundaries and institutions have a cultural and moral impact on the group citizens in question. The growing presence of the state in the lives of its citizens, steadily increasing over the past

centuries, has shaped communities into the domain of the state. Grasping the historical growth of the decentralized state is indispensable to any understanding of the multi-tiered, decentralized state. More so than the state, local and regional government has remained stable through the ages. Cities and provinces generally predate the state by centuries. Early attempts at the democratisation of local government saw theories on ‘organic’ government and subsidiarity rise to prominence. Government was to be shaped along already existing communities, profiting from the existing sense of community. Moreover, decisive power was to remain as local as possible. The Dutch constitution, for one, was modelled to these fundamental credos. In this optic, representation derives from alignment with existent societal groups.

A growing presence of the state at a local level subsequently emphasized the adopted boundaries and sub-divisions; the ability to differentiate generally inspires differentiation. Thus, distinct, and increasingly democratic, representation and sub-state government emphasizes and fosters differentiation and the accompanying consolidation of identification with a polity. Combined with the natural inclination to identify with living circumstances, positively or negatively, local, regional or state-identity flourishes. Representative government always emphasises some coherency of its polity. This identity-related characteristic of not just federalism, but decentralized representative government in general, has its consequences for the federal dynamic of tension and cooperation. As mentioned, an important characteristic of federal government is its ability to shape and determine political issues and the political agenda. Issues are not just framed through the federal lens, but apprehended as opportunities to enliven general opposition. Sentiments of misrepresentation within central government or disadvantage in comparison to other sub-units often track onto existing issues. This may well explain why democratic conflict, over time, appears anew, seemingly synonymous at heart.

A polity, especially when marked by some territorial minority, tends to function within some cultural paradigm; in all extensions of its political and democratic existence. Be it language, religion, heritage, or any other kind of cultural commonality, political discourse takes place within a certain context. While this is far from claiming incommensurability blurs interaction, it does mean political difference will be more than just objective disagreement. Culture, history and political hierarchy track onto political dynamics within multitiered systems. The representative nature of the modern state aligns community with sub-state institutions, and so it is meant: local and regional

government, within federations or quasi-federal systems, formalize territorial communities. Interaction between sub-state government and the central state will thus inevitably be interaction between a sub-state community and the formal state as such. Naturally, the particular pervasiveness of such antagonism depends on a number of factors, ranging from material to historical reasons. In any way, it is both the normative emphasis of minority representation and the liberal valuation of group culture and community, and the value-free reality of representation and decentralized government that drives multitiered representative government to take this shape. The consequences of this antagonism are both formal and material; both the material side of issues and their formal resolution cannot escape this all-encompassing dynamic.

Thus, while federal institutions may be able to enact normative principles, safeguarding both individual liberty and the continued existence of group culture and community, there is another implication. The emphasized link between sub-state representation and a group identity, combined with the federalization of political discourse, creates a particular kind of democratic conflict. Institutionalized moral desert of autonomy and group representation of territorial minorities within the state, paired with the political implications of the multitier dynamic, mean democratic conflict will inevitably arise. The normative foundations of the federal state mean this instance of democratic conflict is not merely a question of majority versus minority. In and of itself the federal idea implies power is not simply distributed hierarchically, but shared, and retains at its very centre the idea that sub-state representation is more than a formalization of local public opinion.

4.6. Representation

The representative nature of multi-tier government, bound up in its normative foundations of state, individual, and community, encourages the consolidation of sub-state polities. Both cultural minorities and territorially bound groups are demarcated and defined through their representation within the institutions of the state. Sub-state democratic institutions effectively substantiate existing sentiments of discontent with federal policy; the bargaining relation between state and sub-state government brings disagreement to light. A distinct public realm, bringing life to the politics of the sub-state polity, grows its relevance by antagonizing national politics. The embedded notion that both sub-state government and state government matter in a representational sense,

awards legitimacy to both. As state and sub-state identity are different and distinct, respective representation tracks onto different strands of personal identity.

Considering individual liberty to deliberate on and pursue one's conception of the good a primary good, the state has a task in safeguarding equal chances and sufficient opportunity to develop the capacity to reasonably judge existing conceptions of the good. The subsequent conclusion that group culture and community may provide both a set of opportunities and values and, in and of themselves, may constitute a particular conception of the good, mean liberal government has a task in ensuring their continued existence. As the normative justification of the federal structure hinges upon the importance to liberalism of the continued existence of an encompassing culture and community, the institutions of the state reflect these principles. Distinct democratic representation will be accompanied by the sanctification of enunciated difference. Pluralism on a statewide level translates to emphasized monism on a regional or national level. While the federation may pride itself on its diversity, lower tiers of government serve a limited group within the state as such. It is through the multi-tiered nature of the federal state that these identities may accompany and accommodate each other. Identity is not monistic; as illustrated elsewhere, it seems to be well possible to belong to multiple polities.[87] The issue, however, is the tendency of institutionalized community to affirm its own values, contrasted with those institutions that exercise power too. Tiered pluralism federation-wide, is political monism down below. It can, of course, be argued, the plurality of polities within the federal state is a fair way of adjudicating between identities, as De Schutter does in his interpretation of federalism as (Rawlsian) fairness. This does too little in explaining the dynamic of representative democracy, however, as majority counts and institutional enactment of cultural dominance will rule sub-polities, and thus determine inter-tier conflict.

The deliberative representation at the supposed heart of normative federal theory, then, is for the most part illusory. Representation instead turns factional and divisive. Underlying assumptions on the nature of cultural identity, and its stability through both time and political course of action, deny the blatant reality of dynamic and

[87] Interesting in this regard is the these on US-federalism voiced by Bulman-Pozen, who claims the multi-tier federal structure enables a dynamic of shifting allegiance to state/nation, along changing electoral success of opposition and government parties: Bulman-Pozen 2014.

changing identity, identification and demography. What are the results for the individual's position? While federal institutions may safeguard the institutional existence of distinct cultural and political groups, the resultant dynamic within democracy has clear implications for the individual's ability to revise and amend cultural identity, alone or collectively. The all-encompassing dynamic of affirmative federal opposition politics overshadows the possibility of dynamic change, instead distorting general democracy by continually entrenched inter-tier democratic conflict.

4.7. Democratic distortion

It has now become clear how the federal structure and the normative arguments used to defend its institutionalisation influence the dynamic of opposition and conflict prevalent within multi-tiered states. Democratic myopia and distortion are a common disease to the projected representative functioning of the state. Between secession and quietude we find democratic tensions that prohibit the true political contestation of the assumptions that underlie the federal state. Territorially defined groups are, on the one hand, emphasized as deserving of representation, instrumental to individual well-being and the continued flourishing of group culture, while, on the other hand, continually subject to federation-wide democracy and resultant contradicting policy. Within the state, multiple democratically legitimized governments fight over policy and authority, all the whilst capturing political culture, in all tiers, within the bounds of inter-tier opposition. As issues are 'federalized', their resolution becomes distant, for they are driven by the same values that legitimize the federation itself. Thus, the claimed benefice of the federal state is threatened by the run-off of its own normative justification. The individual's well-being, fundamental to normative federalism, is lost between the identification with the polities he finds himself being part of. This contradiction, at tension with democracy's ultimate reliance on majority rule, leads to the framing of everything and anything within tier-bound politics. The issues that remain unsatisfactory to parts of the federation come to dominate the political culture of the federation, while contestation of the issues of the federal foundation itself stays out of reach, as do the normative assumptions that have grounded the conflict-ridden dynamic.

5. Now what?

5.1. Conflict as key

Federalism is commonly perceived as an orderly way of uniting pluralism, multi-national or other, within the bounds of the state. The inherent institutional pluralism, uniting as one a plurality of polities that themselves feature as representative democracies with some autonomous domain, is linked to societal pluralism and its political valuation. Liberal theorists have turned to federal theory as the possible institutionalisation of the instrumental value of group culture. The valuation of the individual liberty to pursue the good in life, deliberating freely, the apparent value of community and group culture, particularly national identity, drives liberal government to serve and protect the continued flourishing of these cultural groups. Sustaining individual liberty is balanced with the possibility of situated life. Plural identities are adjudicated fairly, as the federal state offers more than one site of representative democracy, simultaneously creating more sites of political conflict. Federalism spreads and diffuses, lacking supreme hierarchy, with constituent polities unaware of the effects of their compromises. While normative theorists take federalism to be an institutionalisation of fairness, giving expression to territorial minorities and maintaining multiple sources of societal cohesion along different tiers of government, the political dynamic of multi-tier government distorts the orderly representation seemingly envisioned. Normative federal theory predicates order and institutional balance as a uniting principle, while it is, in reality, a system of institutionalized antagonism. Continued emphasis of political identity, the agenda-setting capacity of multi-tier government, and the inherent antagonism between majority and minority, combine into a dynamic wherein democratic conflict is an inevitable part of federal politics. Moreover federalism, along the normative arguments made in its favour, engenders a specifically federal species of democratic conflict: a self-emphasizing conflict, continuously eliciting opposition between tiers, apprehending issues into its inter-tier dynamic. The entwinement with cultural, or national, identity, has the ability to run any and all issue into fundamental disagreement, while the issues at stake remain fundamentally the run-off of inter-tier conflict. Resolution, neither through political means, nor through the most common institutional solution, adjudication by a constitutional court, does much to these issues as the democratic disagreement, as shown, rejects this. The result of the affirming dynamic of federalism, premised on

normative theory, is a democratic conflict that is unable to escape the bounds of its identity-affirming makeup.

5.2 Federal amends

The scope of this thesis has been theoretical, challenging the claims of normative theorists. Besides occasional examples, I have refrained from going into too much real-world detail. The extensive use of different varieties of federalism and its normative justification mean any foray inevitably turns into unnecessary large-scale comparison of systems. Thus, my conclusion is first and foremost theoretical in nature and sees to normative federalism as theoretical practice. Normative theory, of course, remains fundamental to the federal state; legitimization being dependent upon some normative justification and narrative. While I remain in my conclusion that normative federalism, as shown in this thesis, is unable to adequately deal with the inherent conflict it brings, I do believe existent systems could work to improve the normative narrative supporting and legitimizing its institutional structure. Key to this amend should be the place of inter-tier conflict, both in the sense of democratic function and of the individual and his relation to the state.

A shift in the in the interpretation of democracy as primarily a tool for representation and the continued upkeep of the federal consensus, is a first fundamental. Democracy involves contestation and the continued political conflict between positions and groups; understanding and embedding this into democratic and political culture is a principal and general starting point. Specifically federal must be the appreciation of democracy's relation to the continued political appreciation of the federal covenant and the related federal bargain. In normative theory, the claimed status of federalism as 'smooth pluralism' now necessitates a coherent theory of pluralist justice, rendering contestation of these norms a pre-federal affair. The normative roots of the unproductive conflict, then, remain entrenched and out of reach of the federal conflict itself. Democracy's ability to create new meaning, and allow for refounding and augmentation of given norms, is crucial in renewing this trouble. This is, of course, agonist theory at work. Specific to normative theories of federalism must be a renewed examination of the relation between individual and federal state. If truly instrumental at heart—made attractive by arguments from historically given institutional structure and decentral efficiency—federalism must give more substantial accountability of the merit of federalized inter-tier conflict to the individual. While the value of continued cultural

flourishing is, on its own, reasonable, the tensions and conflict are left unaccounted for in relation to the individuals happily encumbered life.

It is beyond the scope of this thesis to offer institutional resolution to these issues; doing so would outrun breadth or remain unconvincingly shallow. What can be said, however, is that overcoming the tensions of overlapping polities in the age of mass-democracy and mass-media, each bringing their own difficulties, is distinctly un-simple. The identified issue-setting and self-confirming nature of democratic inter-tier conflict take both sub-state and national politics in a tight hold. Both non-federal politics and true contestation of the federal bargain remain beyond the reach of practiced political contestation. What remains to be emphasized, institutionally, is the hardship of combining distinct realms of democratic representation into one state, steering clear of misunderstanding and continual institutional antagonism; for democratic institutions to complement each other within a state institutional connection is necessary. An institutional element of note is, of course, the covenant, both formally and normatively, and its consequences. The institutionalized antagonism of normative federalism finds its bearing in the pre-federal and distinctly political covenant, which, along normative renewal must face institutional change. For normative federal theory to remain of use—as it must, simply due to the prevalence of federal and federal-esque states—it must come to face the realities of inter-tier conflict and its impact on the whole of federal politics and democracy, abandoning its assumption of harmony in favour of truly democratic principles of contestation and augmentation.

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