

Brando, N. and De Schutter, H. (2018). 'Federal Commons.' In S. Cogolati and J. Wouters (eds.) *The Commons and a New Global Governance: Democratic, Institutional and Legal Perspectives*. Cheltenham: Edward Elgar, pp. 37-56.

## Chapter 3—Federal Commons

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### 1. Introduction <a>

Dealing with the commons as both a local and a global concern can raise many issues in an attempt to develop a political structure that can manage these various levels of authority. In this response to Pierre Dardot's proposal (see Chapter 2 in this volume), we focus on his account of how the commons are to be institutionalized in our present world. He presents his proposal as a federal system for managing the commons at both the local and global level. Through the use of the federalist theory literature, we will assess the credentials of his federalist programme, arguing that his refusal to grant salient competences and authority to central institutions makes his proposal more of a confederal or treaty-based argument, rather than a federal system. Based on this assessment, we present three connected concerns with his proposed system of governance of the commons, arguing that it is not fully able to deal with the global problems that it intends to tackle. We consider that solidarity at higher levels is currently not stable enough to protect global commons; that the absence of shared rule (through state-like authorities) in Dardot's federal proposal cannot fully protect common concerns more broadly than at the local level; and that the exclusive focus on the *practices* of commoning, disregarding seeing commons as *goods*, may enable unsustainable, inefficient, and potentially oppressive practices. We close by recommending a series of amendments to his proposal, in order for it to, first, be a truly federal political system; and, second, to ensure the protection of and access to the commons as both local and global goods.

### 2. Dardot's Federal Proposal <a>

#### 2.1 From Local to Global <b>

Dealing with the commons as both a local and a global issue, can have its difficulties when devising political structures to govern it. On the one hand, we see in Dardot a concern for preserving and empowering the autonomy and self-management of local commons; while, on the other, the aim of dealing with the inevitable globalization of ecological problems. An attempt to deal with the commons in both its local and global dimensions requires devising alternative forms of governance that can, at the same time, ensure the protection and preservation of local communities and their social practices, while effectively tackling the ecological concerns that have a global impact.

Pierre Dardot is aware of this issue: in his work with Christian Laval (2014: pp. 498-519) and in the piece to which this chapter responds (see Chapter 2 in this volume), he proposes instituting a global federation of the commons as a way to deal with the potential dangers of globalization through both local and global initiatives. It may be that, in an ideal world, local communities could be left to their whims, but the forces of globalization demand a shift in perspective that allow us to understand our global common realities and deal with them as such (Dardot: p. 9).<sup>1</sup> This requires, according to Dardot, stepping away from the state-centric

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conception of politics that dominates the current global scene for two reasons: first, as a return to more local forms of politics that promote self-government and autonomy without state intervention (p. 11); and, second, for the promotion of non-state forms of global politics, where local commons are connected across the world through networks built by common interests and concerns (Dardot & Laval, 2014: p. 516).

## 2.2 From Centralized to Localized <b>

This implies an alternative way of looking at how economic and political concerns are managed, and how people relate to these economic and political structures. By diversifying traditionally state-controlled competences into smaller territorial and non-territorial units, and into larger networks of transnational cooperation, the state loses its role as the central and most relevant source of political and economic authority. Dardot argues that, although the state may be efficient in providing and ensuring access to fundamental services and goods, it does so at the expense of reducing individuals to passive recipients (consumers), unable to have any direct control or participation in this management (Dardot: pp. 11-12). As a response to the problems that arise from this centralization of authority, a return to communal self-government that is autonomous from the state ensures a more active engagement of society in not only receiving, but also managing the provision of and access to the fundamental services previously controlled by a central authority (Dardot & Laval, 2014: p. 498).

## 2.3 From Localized to Federalized <b>

Relying solely on communal, small-scaled governance institutions may not be the most efficient way to deal with global problems; there is a need for establishing mechanisms of cooperation and coordination that reach farther than local forms of politics, while respecting the autonomy and self-government fundamental for their survival. Federal principles, in this respect, are the best way to balance global issues, with the sustainment of an active and engaged local democracy.

Building on Proudhon's federal proposal, Dardot and Laval argue for the need to establish mechanisms of governance that can have a wide reach in its scope of action, while maintaining the local institutions that enable autonomy and self-government. The objective is to develop the idea of 'federal contracts' where the contracting parties establish a relationship based on reciprocity and equivalence between what is given to each and what is kept by each. The rationale of such contracts is to foster cooperation between units, while not falling into the dangers of unification of interests, nor of the transformation of cooperative contracts among local commons into communities unified under a common will (Dardot & Laval, 2014: p. 507). In this respect, they are critical of federal approaches as that of Althusius, where smaller communities cohere with others in a symbiotic manner, transforming the various and diverse practices and interests into a unified community of interests that ends up centralizing the means of economic and political government (Dardot & Laval, 2014: p. 506).

Authority is shared in such federal contracts, but only to the degree that smaller units always keep more rights and liberties than those that they bestow to larger units. Authority of larger units, say Dardot and Laval, 'is specialized and restricted, proportional to its size, it diminishes in number, immediacy and intensity' (2014: p. 507; translation is ours). This

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process of allocation of competences and authority stems from the smaller possible units (individual persons and their rights), growing in a bottom-up direction to larger units, insofar as the smaller units have agreed to share authority over a given issue with others equal to them. This applies to federal contracts of all sizes; from the smaller contracts within local communities, to transnational federations. There is no exclusive level of authority (as with present day predominance of states as the locus of authority within them and among them); the state is, rather, just another level of authority in an institutional continuum that starts with the smallest commons, and ends in global networks of federal contracts (Dardot & Laval, 2014: p. 508).

#### 2.4 The Double Federation: Dividing the Social from the Political <b>

Concerns with the potential centralization of authority by one unit over many competences, and the objective of maintaining as much as possible the autonomy and self-government of smaller units, presses the boundaries of traditional conceptions of federalism, by dividing it into two camps. Still following Proudhon, Dardot and Laval propose separating the authority over the purely *political* domain from the institutions that govern *socioeconomic* issues. Unification of political and social concerns, say Dardot and Laval, is a remnant of a statist conception of federalism that assumes the need to centralize the management of these originally diverse camps (Dardot & Laval, 2014: p. 506). In this respect, the federal contracts that concern the purely political (territorial organization of units, diplomatic relations, coordination of smaller units, reciprocal establishment of rights), are separated from those in the socioeconomic sphere (Dardot & Laval, 2014: p. 511). Two forms of federal institution of the commons are, thus, established: 1) *socioeconomic* federal networks, constituted independent of territorial logic, established for exchange, efficient production, and provision of goods. This also includes transnational ecological commons, such as those required for the sustainment of forests or rivers; and 2) the *purely political* networks which follow a logic of increasing integration of territories so as to regulate and coordinate among the socioeconomic commons within these established federal-political structures (Dardot & Laval, 2014: p. 514).

This division of federal institutions turns the rationale of a simple vertical dispersion of authority into a 'horizontalization' of authority, where units are not only linked to larger or smaller units in a vertical line, but they relate and contract with each other in a horizontal way, without having to pass through larger units, coordinating on issues that affect them exclusively, thus, pluralizing the *loci* of authority over different issues, in different types and scopes of federal contracts (Dardot & Laval, 2014: pp. 513-514). The sources of democratic involvement are diversified in this respect. Not only are democratic entitlements ensured in the various vertical levels of political participation (from the communal to the global), but they are strongly endorsed and protected in the socioeconomic sphere through the democratization of the workplace, and of the decision-making procedures over the production and provision of various services and goods (Dardot & Laval, 2014: p. 512). This diversified democratic involvement secures the capacity of self-government in the various spheres of human life, protecting from the dangers of bestowing authority over social or economic concerns that are not territorial in nature, thus not apt for political institutions to manage.

### 3. Locating the Institution of the Commons <a>

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Our first concern when assessing Dardot's institutionalization of the commons as a federal proposal stems from the use of the idea of 'federalism' as a way to portray his political system. No consensus exists in the literature regarding a specific characteristic that can define federalism as such. However, looking at various relevant characteristics of a political system, and comparing them with the different attributes often ascribed to federations, we can estimate how much that political system relies on federal elements, and how much it includes both unitary and confederal/treaty-based mechanisms. Although it may seem a pointless semantic debate, the vagueness in Dardot's use of the term 'federalism' is not without its problems. It allows almost any political system to be labelled as federal, enabling contradictions within the concept to appear as consistent among each other.

Among the various possible characteristics of federations, the following five are characteristic of *most* federal systems, as described in the federalism literature: 1) the diversification of competences (and their salience) at different levels of government; 2) the *Kompetenz-Kompetenz* (the authority to decide over competence allocation) should not be solely decided upon by either the central level or the member units level; 3) the constitutional entrenchment of competences; 4) the ability of both levels to control the constitution(s); and 5) the 'dual' characteristics of the public sphere. We will analyse Dardot's proposal on the basis of these five characteristics, and assess what is the most appropriate way of defining its government system. This will be in keeping with the traditional three-legged typology of unitary/federal/confederal used by most of the federal literature today, in order to define the actual rationale behind Dardot's 'federation of the commons'. We will subdivide and expand this triad into smaller categories when required, following John Law's (2013) more specific typology.

### 3.1 Diversity and Salience of *Loci* of Authority <b>

The first fundamental characteristic of a federation is the particular distribution of competences in different levels of government. A federal political order, in its most minimalist definition, can be considered as a system where shared-rule and self-rule are combined (Elazar, 1987). Diversification and non-centralization of at least some salient competences, in this respect, is the first fundamental element that defines a federal system (Kelemen, 2003: p. 185; Watts, 1998: p. 124).

At least some salient competences (such as defence, foreign policy and the judiciary) are governed by the larger, central unit, while at the same time the member units of the federal entity govern (at least some) other salient competences (typically culture, education and infrastructural matters) that only concern them. This is opposed to both unitary and confederal dynamics: in the first, all or most of the fundamental political (and economic) competences are held by a *central* unit of authority (usually in the hands of a state as it is seen today, but could be imagined as a global system as well); in the second, all or most of the fundamental competences are administered by the smaller units (this could be seen within a domestic society or at a regional/global level). The fundamental difference between the three systems, in this respect, is in the balance between who keeps most of the authority: the scale in the unitary system inclines towards the higher level; the confederal system inclines towards the lower levels; and the federal system intends to achieve a balance between both.

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Three features of Dardot's proposal allow us to understand their position regarding the degree of shared-rule of salient governmental competences. First, they emphasize the value and the fundamental role that smaller units have in exercising self-government and autonomy. This is their main concern and their main objective: to maintain and promote as much as possible the capacity of local commons to manage themselves without external impositions. Second, and following from the above, they show high reticence towards any centralization of authority. Their intent to localize government stands against any higher level of governance having any of the salient competences and authority previously held by the smaller communities. Up to this point, it would seem that their proposal would stand on a system of small scaled self-governed commons that have sole authority over the issues that concern them. This could be imagined as a system similar to that of city-states, or of roman *municipia* (Dardot & Laval, 2014: p. 514). But their concern with larger ecological problems, and the requirements to coordinate and cooperate among larger units in order to sustain production of larger commons, goods and services, leads them to concede to the need to establish 'contracts' among these local commons. This surely appears to be a move towards a more federal division of competences to deal with issues at different levels of government. But, we argue, the nature of the contracts proposed by Dardot, and the *locus* of most of the salient competences, are not consistent with a federal mechanism. As mentioned above, federal dynamics point towards a balanced diversification of salient competences among the different levels of government, but Dardot's approach is mostly concerned with the conservation of the highest possible degree of authority at the lowest levels of government, restricting and specializing the competences granted to higher levels, and diminishing their intensity and number (Dardot & Laval, 2014: p. 507). It is clear that the objective is not to find a balance between the authority of various levels, as in the case of federal dynamics, but rather devise a pyramidal structure, more traditional to confederal entities, where most competences stay with local units.

### 3.2 *Kompetenz-Kompetenz* <b>

This feature looks at which level of government has the authority to allocate competences. This is a fundamental feature that allows to differentiate federal dynamics from other political systems because it defines the final source of authority in a political system. In the case of the federal system, the element of shared rule plays a fundamental role here as well. Opposite to unitary systems, where this competence to assign competences is held by a central unit (top-down; as in the case of Belgium or Spain); and opposite to confederal dynamics, where the member units are the ones that assign competences to a higher level (bottom-up; as in the European Union (EU)); a federal polity makes use of the institutions at a higher level to assign competences, but does so through a deliberation by and among the smaller units. In this sense, it seems that the competence is at the central level, but acquired through a decision-making procedure controlled by the smaller units. The *kompetenz-kompetenz* in federal systems can be considered not to rely, thus, in one sole level of government, but rather transcends these levels by adjudicating this authority to the *citizens* themselves (see Law, 2013: pp. 101-102) or by involving both levels of government. In this respect, a fundamental difference between the three systems is how the *kompetenz-kompetenz* deals with the subordination of one level of government to another. In unitary systems, the final source of authority is the larger central level, thus subordinating smaller levels to it; in confederal systems, higher levels are subordinated to the mandates and allocation of competences by the

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member units; and federal dynamics aim at achieving an 'equality of status' among the various levels by not assigning this basic authority to either side (Law, 2013: p. 105).

Regarding the allocation of competences, Dardot's proposal seems clearly to rely on confederal dynamics, where the sole authority that can decide on granting competences to other levels of government is the smaller unit. Their objective is to promote a system of grass-root democracies that have the final authority to bequeath competences to higher levels if it is in their interest. Their concern with centralization of authority and with top-down approaches to global governance shows that neither the unitary nor the federal allocation of competences is sufficient.

### 3.3 Entrenchment of Competences <b>

The existence of an insured and protected entrenchment of competences at different levels is another relevant characteristic of a federal system (King, 1982). Unitary systems may devolve competences to smaller units, and a confederal system usually assigns competences to larger entities, but it is a federal characteristic to ensure that the competences allocated to smaller and larger units are entrenched (usually through the use of constitutions). The equal standing of the various levels of government is sustained in federal systems by ensuring that no level can withdraw competences from another without common accord. In this respect, salient competences are: first, allocated at diverse levels of government; second, this allocation is specified by joint mechanisms; and, third, they are constitutionally defined in order to protect the competences of member units, and ensure the stability of the federation through the entrenchment of competences at the higher levels. This achieves two of the fundamental aims of a federal system: on the one hand, ensure the autonomy and self-government of smaller units; and, on the other, protect the stability of the federation by constitutionally defining the role that the central polity plays (Watts, 1996: pp. 6-7; 1998: p. 124). Contrary to this equilibrium achieved between stability (of the larger polity) and autonomy (of the member units), confederal dynamics focus especially on the second element, protecting the liberties and identities of member units. This allows for greater self-government, but restricts the capacity of the system to maintain stable and long-enduring relations (Downs, 2011).

Defining Dardot's proposal regarding the entrenchment of competences is more complicated due to the lack of an explicit explanation for how the stability of larger units is to be sustained in their institutionalization of the commons. Regarding smaller units, Dardot's proposal is very clear as to how a political constitution establishes the fundamental principles, rights and authority that local commons have (Dardot & Laval, 2014: p. 514). But the protection and assurance of these competences at higher levels is less clear. It relies on Proudhon's idea of 'mutuality' as a way to secure that reciprocity and equality in social and economic relations is sustained (Dardot & Laval, 2014: p. 340). This is a complicated concept because it is not clear in what way it is institutionalized. They mention the idea of a 'social constitution' where the reciprocity and equality of social and economic relations is secured across various commons, and at different levels of government (Dardot & Laval, 2014: p. 340).

This would seem to be an entrenchment of the competences and rights of smaller units at a higher level, but two characteristics make this statement difficult to sustain: first, the fact that this 'social constitution' affects only social and economic relations but not political relations

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(due to their separation of competences into two different federal camps) leaves the stability of political competences on a thin rope. It could be argued, even more, that this is precisely one of the objectives that they have in mind. Their concern with centralization leads them to not entrench competences on the political arena so that potentially coercive or problematic authorities are unable to keep smaller units under their control against their will. Second, even within the sphere of social and economic relations where the social constitution is in place, it is unclear what enforcement mechanisms would secure the existence of this constitution in cases of violation. There is no account of how this constitution is institutionally enforced, thus allowing one to assume that its entrenchment relies on the willingness of the units to comply by its directives. This could lead to declare that the entrenchment of competences follows, once again, a confederal dynamic: it is just established at the lower levels of government, making the contracts at higher levels seem more like present-day international treaties, which do not have strong enforcement mechanisms, do not necessarily include stakeholders, and which can be broken at any moment.

Of course, Dardot might decide to add measures to ensure some form of strong entrenchment of the higher level's competences, bringing the proposal closer to a federal order. Nothing in the proposal explicitly makes such a move inconsistent. Yet, if our reasoning above is correct, the gist of their theory appears to go against tying the hands of the lower levels by committing to entrenchment of powers at a higher level.

### 3.4 Legislative and Constitutive Diversity <b>

Another feature of federal structures is the existence of legislative capacities (especially constitutive) at the different unit levels, with a significant degree of autonomy for smaller units to develop a constitution and legislation. This is contrary to unitary systems, where legislative (and constitutive) powers lie solely with the central unit; and contrary to confederal treaties, where only the member units have legislative (and constitutive) authority, with no enforcement mechanisms at the higher level. Federal systems maintain significant autonomy over legislative procedures with smaller units having their own constitution and legislation, which the larger unit cannot contest or overrule, except in cases of major violations or major discrepancies between legislatures. But, just as there are spheres where self-government of smaller units is sustained, a characteristic of federal systems is the existence of binding legislation and enforcement mechanisms at the higher levels of government, which affect member units directly (Law, 2013). This aims at ensuring that the interests of all member units are protected in equal terms by the central government.

It seems that the same problems that arose with the previous feature arise here as well. It is clear that the unitary dynamic is out of the picture, but the indeterminacy in the explanation of the capacity to enforce legislation at higher levels of government makes it difficult to assess whether their proposal stands closer to a federal or to a confederal dynamic. Dardot's focus on constitutive and legislative elements at the lower levels seems to point towards a confederal strategy. But the fact that the proposal acknowledges the existence of constitutions (both political and social) at the higher levels of government, even if their enforcement mechanisms remain in the power of smaller units, makes it incline towards a more federal legislative and constitutive structure (Dardot & Laval, 2014: pp. 342-344, 514). To fully assess the proposal as far as this issue is concerned, we would need more information on the nature of the

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constitutional existence that Dardot intends to give to the wider constitution, and the degree of inclusiveness and formality this constitution can have. Perhaps it is reasonable, therefore, to locate the proposal in a middle point between federal and confederal as far as this issue is concerned, due to the fact that its account of constitutional variety does seem to drink from both sources.

### 3.5 The Public Sphere <b>

The public sphere is a fundamental element of a democratic political community.<sup>2</sup> An assessment of the general outlines of the type of public sphere emphasizes the variation between the different political systems. Unitary systems tend to have a sole public sphere at the higher level where all political activity is carried out, leading to a conception of the individuals within this system as one unified community; on the other hand, confederal dynamics tend to have public spheres within the member units, while only indirect political involvement at the higher level. This approach emphasizes the distinction between various communities and groups within the system, giving a more prominent role to this diversity, rather than to the unifying interests of the whole political system. As argued previously, the peculiar characteristic of a federal system is the diversity of levels where a public sphere exists. Not only do smaller units have their own spaces where political activity develops (sometimes in different languages, and through different means), but they also have a stable sphere of political activity at the higher levels of government. In this respect, citizens in a federation are not only citizens of the larger polity, nor exclusively part of their own local communities; rather they are simultaneously part of both public spheres, as citizens of their own local groups *and* of the larger polity (De Schutter, 2011: p. 168). What this entails is that the population needs to be involved both with their local political arenas, and with the issues that affect the federation as a whole. The relevance of the public sphere for the assessment of the federation relies in that it looks, not only at the purely institutional mechanisms that make a federation, but also at the spaces and interests that society has in being involved with the decision-making procedures at different levels of the polity.

This is another difficult feature to deal with, not because of the lack of an explicit statement in Dardot's proposal, but rather because its (very explicit) conception of the public sphere, and of how the *demos* is constituted, does not fit clearly within any of the traditional categories of political systems. In his chapter in this volume, as in his work with Laval, Dardot argues for the need of plural demo-cosmopolitan' systems that are not institutionalized in any way (Dardot: p. 12; Dardot & Laval, 2014: pp. 459-464, 515-516). They are, rather, 'insurgent citizenships' that arise outside of the traditional arenas of politics, in a bottom-up direction, with a scope of action that can arrive to the higher levels of government. Their conception of the *demos* and the public sphere is that of plural, decentralized and non-institutionalized arenas of activism, where both socioeconomic and political issues are discussed, ranging from activism within local commons, to global ecological concerns. From this account, it seems that the overall objective put forward by Dardot, is to decentralize as much as possible the *loci* of political engagement and activism, as a way to counter the reifying effects of institutionalized public spheres and *demos*. Although his account cannot be clearly assessed within the categories used in this chapter, it is clear that it does not follow some of the requirements of a federal public sphere due to the absence of a unified political arena. Opposite to Dardot's reluctance to give space to a common identity among citizens of the

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federation, a cornerstone of a federal system is its capacity to sustain and foster the differing identities and public spheres of the various units, while having the unifying power to generate a common identity, and a sense of 'togetherness' among them (De Schutter, 2011: p. 177; Jewkes, 2015). Without this sense of community that includes the whole citizenry of the polity, there does not seem to be much of a federal dynamic.

This section has sought to show that it is terminologically possible, though not evident, to label Dardot's proposal 'federalist' in nature. Seen in the light of contemporary federal and confederal theory, the proposal is closer to the confederal or even international treaty category than to federalism as commonly understood. This in itself leads to a number of normative concerns. These concerns originate in the normative consequences of the very reason for Dardot's *confederal* proposal: its emphasis on local forms of politics that are primarily concerned with autonomy and self-government of smaller units are unable to deal with the issues and conflicts *among* local units that federal structures intend to solve.

#### 4. Government of the Commons or Self-Government? <a>

As we just discussed, it is not evident to classify Dardot's proposal as federal; instead it could be more properly described as exhibiting a confederal logic. This brings to mind two typical problems that confederal settings give rise to: lack of solidarity amongst the member units, and lack of coercive capacities at the level of the confederation. But before discussing these in sections 5 and 6 respectively, we want to discuss the nature of the sites of self-government that Dardot envisions. A first task for any theory that combines different levels of government—be they federal, confederal or still otherwise in nature—is to identify the relevant units of self-government, and to identify principles for allocating competences to each of them. What are the relevant sites at which democratic self-government will be exercised?

Here it appears to us that Dardot romanticizes the social practices of the commons, by presenting an idea of human cooperative behaviour (within and between the commons) that, as we shall argue, can lead to problematic results if institutionalized as a result of the confederal focus on the local sites of self-government. In particular, the self-government and autonomy of each currently existing common *as a social practice* does not ensure the fair sustainment of the commons *as fundamental goods* in need of steering and/or preservation. We cannot simply assume that the commons as current social practices will ensure the protection of common goods, or the access to fundamental common resources or services to all those who depend on them. By granting a 'confederal' priority to existing local sites of self-government, Dardot's programme risks neglecting the fundamental goods nature of the commons at higher levels.

In fact we argue, positively, that democratic practices should track commons as goods: we should have democratic practices where we find the need for a certain commons to be collectively governed. Dardot's proposal seems to work with the opposite model: to organize democracy around existing sites of self-government. His model is decidedly bottom-up, focusing on respect for local units of communal self-government, whose autonomy is crucial. Yet, existing sites of local self-government can clash with those sites where the commons (as fundamental goods) reside and where, therefore, self-government ought to be organized.

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In our view, a political philosophy of the commons ought not to protect current sites of self-government, but instead current sites of the commons. This intuition, we think, is close to some central understandings of democracy. Take the all-affected principle, now often discussed in the political theory literature on transnational or global democracy. The all-affected principle states that whoever is (relevantly or significantly) affected by a public decision should have a right to inclusion in the democratic process that produces that decision (see, for instance, Cavallero, 2010). The argument is deployed in the current literature on global democracy to justify the expansion of democracy beyond national boundaries. This expansion is desirable, so the defenders of this principles argue, where decisions made within domestic polities significantly affect others living outside those units, for example in cases such as river management, nuclear plant location or global warming. Similarly, Dardot's local sites of self-government are likely to make such decisions that affect others living outside those sites, given the fact that the commons as fundamental goods are likely to have a wider geographical ambit than local self-governing units have. So the all-affected principle calls for identifying the units that are to decide on certain decisions based on those who are likely to be affected by the decisions taken by a unit. Where such other-affecting decisions are made, it goes radically against limiting to democracy to existing sites of self-government.

Or take Jeremy Waldron's principle of proximity, which states that political communities ought to consist of those people who are territorially close to each other, especially if they are likely to have conflicts among themselves (Waldron, 2011). On Waldron's view, it is around territorially based conflicts that the zone of self-government ought to be organized, because those are the zones over which we want democratic control. These zones should thus explicitly not be limited to existing sites of self-government, but should transcend them. The result is a situation in which the zone where we want democratic control determines the site of self-government, rather than the other way around.

We mention the principles of all-affectedness and proximity here not to defend specifically these principles, but to point to a more general aspect about democracy, which is its problem-solving focus. Democracy does not exist for its own sake: it is a manner of deciding over the solution to problems or collective choices, be they local or global. Democrats want the decision-making over fundamental questions, such as the governance of global commons, to occur in such a way that it involves the people themselves. But the people that are to be involved are not the people of existing sites of self-government, but instead those who are significantly affected or who need to solve the problem together. In the typical case of a river that streams from unit A to unit B, whereby B needs the clean water from the river, we ideally need to take the control over the river management out of the hands of solely the upstream group, so that the downstream community can co-decide over, for example, the dumping of waste in the river. And it should not be up to the upstream group whether they want to participate in this joint or communal management. Because the river is a common good to both communities, it ought to be governed together. In short, democracy should be organized where shared commons exist, not where it traditionally was exercised. And because the governance of shared commons is likely to include people who are not part of those traditional sites of self-government, the units of self-government must often be widened.

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## 5. Solidarity and Shared-Rule <a>

It is not enough for the sites to be widened though. Ideally, the widened sites of self-government must decide in a manner that allows for sufficient solidarity to emerge between the people who are to decide over the commons. A related concern with Dardot's proposal that stems from its 'confederal inclination', is, in our view, its meagre capacity to cultivate solidarity among the co-governing constituent units. The strong emphasis on self-rule, and the lack of mechanisms of shared-rule, present an outlook of units being highly concerned only for themselves. There seems to be no attempts to build a *demos* across units, or to engender federal forms of identity that transcend self-interest and foster the emergence of common interests and goals. The protection of self-government authority of the constituent units is not the sole objective of a federal system; generating a sense of unity and togetherness is as important as maintaining authority at local levels (De Schutter, 2011: p. 168). The solidarity promoted by federal dynamics points towards the establishment of strong ties among the various groups, which transcend self-interest and can actually achieve the mutuality that Dardot intends to build through his Proudhonian contracts.

Solidarity among the horizontal and vertical relations of political units requires strong assurance of how mutual cooperation and reciprocity are to be achieved. Although Dardot (and Laval) clearly defend that 'federal contracts' are to be promoted with the objective of mutuality (reciprocity and equity), it seems that the instability of these contracts makes them prone to falling apart. Their institution of the common seems to use federalism as an unwanted but inevitable *modus vivendi* founded on the self-interest of the various groups, rather than on the search for commonalities. This fosters an existing 'what's in it for me' view, which local actors employ when they look with suspicion at higher forms of democratic decision-making. But issues and endeavours that require stable and on-going cooperation among various groups, such as those that affect the global commons and ecological sustainment of the planet, demand more than coordinated self-interest; as Wayne Norman argues, there is a need for a *moral* commitment among the various parties, in order for the political system to be stable and effective (Norman, 1994: p. 87). Self-interested contracts established as a *modus vivendi*, as Dardot seems to defend, may be a first step towards the creation of a federal system, but a shared political identity is required in order to ensure the stability of the political system, and of the protection of the global interests that are involved in this endeavour (Weinstock, 2001).

Dardot and Laval's proposal assumes a very high degree of cooperative behaviour in individuals and groups, where there is no need for enforcement mechanism that can ensure that this cooperative behaviour is actually sustained. We consider that if there is no sense of solidarity and some degree of unified will, then stability cannot be achieved. Mutuality, opposite to solidarity, seems to be too focused on the self-interest of groups and individuals; making contracts dependent on the willingness of local units to cooperate (in fair terms) among them. Solidarity, on the contrary, emphasizes the idea that self-interest has to be transcended in order for larger projects (such as sustaining global commons) to be properly carried out; a conception of an 'us', of a community (which Dardot is extremely reluctant to build), is the best way of approaching common issues and problems.

It is important to note that Dardot's account of global networks of insurgent citizenship is

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intended as a source of unification of interests at levels higher than the local. But the excessive focus on these being constructed through the shared self-interest of the parties makes it difficult for those who would not receive benefits from these contracts to do their part in supporting the others' plea. We can imagine an ideally formed network of forest communities establishing federal contracts to protect their environment. But, as long as non-forest communities are not bound by this contract, the externalities generated by their production processes may counter the efforts made by the forest networks. We can imagine as well a network of commons united in the equitable use of a river, but what is there to gain for the upstream units in sharing its benefits with those farther downstream? There seems to be no assurance that those at the source would willingly stop polluting the river for those at the mouth. Unless solidarity is fostered, and unless a central protection of the interests of more vulnerable communities is ensured, a political system would be unable to cultivate the 'mutuality' that Dardot intends to secure among various peoples.

## 6. The Role of Coercive, State-like Institutions <a>

As we just discussed, existing levels of solidarity may not suffice in order for distinct groups to meaningfully work together in a setting that can never be more than a *modus vivendi*, to be broken up whenever power dynamics, or solidarity tendencies, change. This is not just problematic from the point of view of the lack of a common we-feeling and overarching identity. It can also perpetuate and exacerbate relevant inequalities in power and wealth among units. Dardot's conception of federal contracts is based on mutuality (reciprocity and equality) and consent. This may, however, allow wealthier and more powerful units to seize control in the decision-making procedures (such in cases of 'equal and reciprocal' treaties among states of the world; or in the EU). It also enables wealthier units to opt-out of contracts that may require them to distribute part of their benefits to other less-wealthy units. With no obligatory distributive mechanisms, inequalities would rise.

This leads us to our final concern: the lack of central authorities. As mentioned before, solidarity is a fundamental objective of systems that intend to tackle large issues, and due to the lack of assurance that self-interested groups will respect mutuality, solidarity has to be built through some degree of unification of interests, and through a common source for the protection of the rights of smaller groups. In our view, the global layer(s) of the federal entity that is to preserve global or near-global commons, should also have coercive power. Some degree of centralization of competences, and some coercion over their exercise, is fundamental for the equitable and reciprocal protection of interests. As mentioned above, relying solely on the willingness of groups to cooperate fairly with others is too much of an ideal assumption of human behaviour. Although efforts to prove the sustainability of commons and equitable relations among local groups without the need of a state or a central authority have been thoroughly researched with outstanding outcomes (Ostrom, 1990); the likelihood is slim that this can be achieved on a great scale, without the role of central agencies at higher levels, such as those able to enforce some measure of cooperation in dealing with global commons.

So, if we cannot have pure solidarity ensuring cooperation, then a form of coercion must be installed, for two purposes: in order to enforce cooperation where it does not exist, and to foster a common identity, or federal 'peoplehood', in order to make uncovered, spontaneous

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cooperation more likely. This latter understanding of federal identity is in fact similar to identity structures in existing federal states: such are, and are encouraged to see themselves as, members of two peoples: one people ruling over local manners, and one, state-wide people, ruling over state-wide manners.

Take, for instance, Dardot's example of the Obama administration's decision to authorize American companies to use natural resources from the outer space. As Dardot persuasively argues (see, Chapter 2 in this volume: p. x), this decision effectively circumvents the prohibition on appropriation by a sovereign state of what is considered *res communis* by the Outer Space Treaty. The decision does not establish collective American property rights or sovereignty over resources in the outer space, but it grants companies usage rights. Dardot concludes that this vision does not break with the inter-state logic, and leaves room for private appropriation.

We agree with Dardot that the appropriation of space resources by the United States (US) is problematic. But it does not occur to us that the problem would dramatically change or improve if instead existing sites of self-government were to make decisions over natural resources from outer space. The same inter-unit logic would then apply: in the absence of global solidarity, one such unit might decide to appropriate what it desires or what serves its interest, to its own benefit, and the solution might be as pernicious as the current one. We agree that the current content of the decision that is made is problematic, but we do not agree that the solution is to take the matter out of the hands of state-like power. In our view, the central problem here is that the decision is made by only one of the parties of a global community that should instead decide. It is the lack of globality that is the real problem here. This kind of decision emanating from a single level of American authority, over a veritably universal commons, should be made by the global community, in a global site of self-government.

This argument is not compatible with Dardot's federal proposal as it currently stands. Dardot is reluctant about centralizing common concerns of various local commons into larger unified entities. He argues that the various commons should not turn into a sole community because this would transform the diverse identities and practices of smaller units into the common will of the whole, thus, reducing self-determination and autonomy.

However, we would like to stress that this overarching objection to community building is relevant especially in the context of strongly unified and centralized polities, but not necessarily with respect to less centralized types of states, including federal state systems that accommodate the demands of self-government of smaller units, while, at the same time, protecting common interests of the larger polity through central institutions that can ensure more efficient and egalitarian outcomes. The kind of federal global entity that could decide over global commons, create solidarity in governing them, and also enforce cooperation where solidarity fails, would structurally be very different from a unitary state. It would exhibit all the properly federal features that we discussed above. Competences should be diversified over different levels of government, ensuring local autonomy. This autonomy must be constitutionally entrenched. Changes to the constitution should not be possible solely by one of the levels: every transfer of power upwards or downwards needs the involvement of both (or multiple) vertical levels. And efforts must be undertaken to ensure a public sphere

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(and corresponding identities) at both levels. A structure characterized as federal in these ways, with 'state-like enforce power', we argue, would allow for a fair and sustainable management of global commons, that would in some cases certainly curtail, but in no way jeopardize the autonomy of the local management of local commons.

## 7. Conclusion <a>

In this chapter, we analysed and evaluated the federal credentials of Dardot's theory of the common. Based on a comparison of his theory of the common with federal political theory, we argued that, while the concept of federalism is polysemic enough to warrant many interpretations, the conception of federalism that Dardot puts forward comes closer to confederalism than federalism as typically understood. The main reason for this is the priority Dardot grants to local self-governing communities. We then proceeded to a normative critique of this 'confederal' position, based on three grounds. Firstly, his theory shows a lack of capacity to organize democratic self-government around the commons as fundamental goods, as a result of the empirical and normative primacy granted to local sites of self-government. Secondly, the democratic government of the commons that it does allow for is unlikely to engender sufficient supra-local or global solidarity. And finally, the lack of coercive state-like institutions at the global level is unable to enforce cooperation in the sharing of burdens and benefits of governing global commons, in those cases where solidarity indeed is lacking. Finally, we argued therefore, for a friendly amendment to Dardot's theory, pushing it in a more federal direction, where some measure of balance and power-sharing exists between the global (and other supra-local) levels and the local level, not granting full sovereignty to the local units over questions of the management of locality-transcending commons, and not making the authority of the global level depend solely on the consent of the local sites. To be a member of a federation is to be a member of two or more self-governing units, who are in a position of parity vis-à-vis one another: the local and the global, and possibly other levels in-between.

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## Notes

\* This research was supported by the KU Leuven Research Council (Grant PF10/001). The authors would like to thank Christiaan Boonen, Samuel Cogolati, Martin Deleixhe, Rutger Hagen, and Nils Vanstappen for their comments.

<sup>1</sup> Single pages without date reference Dardot's Chapter 2 in this volume.

<sup>2</sup> We follow Jürgen Habermas' definition of 'the public sphere,' understood as a deliberative space in which 'private people come together as a public' (1989: p. 27) to engage in critical debate over their socioeconomic and political governing mechanisms, open to all in a free and equal manner.