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The Myth of International Delegation: Limits to and Suggestions for Democratic Theory in the Context of the European Union¹

CAN DEMOCRATIC STATES DELEGATE AUTHORITY TO INTERNATIONAL agencies? In current debates over the legitimacy of power in global governance, it is often taken for granted that democratic states indeed have this capacity; moreover, it is commonly assumed that the mechanisms of delegation are capable of structuring even such powerful organizations as the European Union.² It is not always clear what different authors have in mind when they speak of delegation, but generally they appear to share at least the standard view that delegation occurs when someone is authorized to act on behalf of someone

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² Contributions that address normative issues on the basis of this position include, e.g., Giandomenico Majone, 'Europe's "Democratic Deficit": The Question of Standards', *European Law Journal*, 4: 1 (1998), pp. 5–28; Mark Pollack, *The Engines of European Integration: Delegation, Agency, and Agenda Setting in the EU*, Oxford, Oxford University Press, 2003, pp. 410–14; Andrew Moravcsik, 'Is There a "Democratic Deficit" in World Politics? A Framework for Analysis', *Government and Opposition*, 39: 2 (2004), pp. 336–63; Miles Kahler, 'Defining Accountability Up: The Global Economic Multilaterals', *Government and Opposition*, 39: 2 (2004), pp. 132–58; Ruth W. Grant and Robert O. Keohane, 'Accountability and Abuses of Power in World Politics', *American Political Science Review*, 99: 1 (2005), pp. 29–43. The politically most influential example of this position is probably the Maastricht verdict of the German Constitutional Court in 1992; see Ingo Winkelman, *Das Maastricht-Urteil des Bundesverfassungsgerichts vom 12. Oktober 1993. Dokumentation des Verfahrens mit Einführung*, Berlin, Duncker & Humboldt, 1994.

else. This implies that there is one thing that cannot be delegated, namely final authority, which can only be alienated or surrendered.

If international agencies actually operated on the basis of authority delegated to them by democratic states, an important normative conclusion would follow. That is, an international agency could be democratically justified even if its own procedures were non-democratic; after all, any of its democratic principals could simply retrieve the powers delegated to it. Hence if international organizations operated on the basis of the authority delegated to them by democratic states, a commitment to democracy would require us to consent to otherwise unacceptable political procedures:³ law-making by institutions that are neither directly elected nor accountable to any parliament; the prevalence of closed-door meetings and the absence of any common debate among the population governed by the organization; widely diffused and legally protected veto powers that can be used to quash even such positions taken by popular majorities as are maturely deliberated and persistently maintained; and so on.

In this paper, I challenge the above argument. I find that the structure of international politics, unlike that of national politics, is such that the authority exercised by non-democratic agencies is – depending on how we define authority – hard or even impossible to restore to democratic hands. To take an extreme case: no state can retrieve the decision options possessed by an international organization, unless, that is, a single state takes control over the territories and populations of all the other states within the organization. Under this interpretation of authority as involving a real power of choice among options when decisions are made, the mere existence of international agencies would appear to violate a basic requirement of both democratic and moral theory: that the people be able to delegate political authority or autonomy, but never to alienate it irrevocably.⁴ This is

³ Such a consent may perhaps require also some non-procedural criteria to be met, for example the protection of certain individual rights.

⁴ The principle that moral autonomy can never be alienated to other agents is embraced by philosophers such as Locke, Spinoza, Rousseau and Kant. Some of these thinkers are more inclined than their counterparts to regard autonomy as a collective attribute. For a brief survey of this literature, as well as a yet further attempt to argue in favour of the inalienability thesis at the level of individuals, see Arthur Kuflik, 'The Inalienability of Autonomy', *Philosophy and Public Affairs*, 13: 4 (1984), pp. 271–98. For an application of this argument to democracies in our time, as well as a more direct consideration of the possibilities of delegation, see Robert Dahl, 'Procedural

not necessarily a sound conclusion, but an illustration of where delegation theorists, apparently to their own surprise, end up if they apply their own concepts consistently.

Before proceeding further, it should perhaps be recognized that international institutions may be justified democratically in ways other than by reference to the retrievability of authority. For example, while the directly elected parliament of the EU is not as powerful as national parliaments generally are, it does play an important role in specific policy areas, for example in regard to the budget. On the other hand, the most comprehensive and sensitive studies of democracy in the procedures of the Union do indeed tell us that significantly greater democratization is still needed.⁵ It may also be that, where international organizations are concerned, we ought not to rely on democracy as a source of legitimacy at all; instead, perhaps, objectives like peace or efficiency would be more appropriate.⁶ On the other hand, both scholars and activists are increasingly calling into question the view that international institutions can be legitimized by reference to their ability to solve problems that individual states alone cannot handle: they demand accountability.⁷ Hence it remains an important task to consider the *democratic* legitimacy of international organizations. This brings us back to the question of whether it is our international commitments or the democratic theory of delegation that ought to be reconsidered.

Now, it may certainly be that there is no such thing as a democratically acceptable delegation of authority to an international agency. One could also argue, however, that we need to reshape our theory of delegation so as to capture and evaluate international delegation, or such similar phenomena as may exist, as an object of study. While no

Democracy', reprinted in Robert Goodin and Philip Pettit (eds), *Contemporary Political Philosophy*, Oxford, Blackwell, 1979/98, p. 114; or Henry Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy*, Oxford, Oxford University Press, 2002, p. 225.

⁵ Christer Karlsson, 'Democracy, Legitimacy and the European Union', PhD thesis, Department of Political Science, Uppsala University, 2001, ch. 8. Christopher Lord, *A Democratic Audit of the European Union*, New York, Palgrave Macmillan, 2004, ch. 9.

⁶ Robert Dahl, 'Can International Organizations Be Democratic? A Skeptic's View', in Ian Shapiro and Casiano Hacker Cordon (eds), *Democracy's Edges*, Cambridge, Cambridge University Press, 1999.

⁷ David Held and Mathias Koenig-Archibugi, 'Introduction', *Government and Opposition*, 39: 2 (2004), pp. 125–6.

partly normative statement should be adjusted – let alone abandoned – simply because existing policies deviate from it, there are reasons of particular relevance in this context to consider adjusting or abandoning the current theory of delegation. Most theories of democracy, including those examined here, have been formulated in an effort to understand the domestic politics of individual states.⁸ The observation that international organizations are incapable of meeting one of democracy's most basic requirements ought, therefore, to be treated with some suspicion. Unless we are willing to reconsider our underlying theoretical assumptions, we will be unable to ascertain whether the problem in question – the failure by international organizations to meet a certain democratic requirement – is one of defective democratic practice or one of insufficient reflection on the possibilities of democracy under international conditions. Furthermore, since any theory can ultimately be assessed only against a rival one, I shall make a modest attempt to suggest an alternative theory to the one identifying delegation with recoverable authority, before I venture a judgement on the democratic legitimacy of international agencies.

The kernel of my alternative theory is as follows: authority is 'delegated' rather than alienated by the people to the extent that no more people could participate in its exercise while maintaining as much autonomy as possible for as many people as possible.⁹ I find this principle superior to its alternative in the sense that, while protecting more or less the same ideal as the original version, it is more helpful for identifying such reforms as may further the democratization of international institutions. In view of this principle, moreover, I argue that, while the existence of democratically justifiable international agencies is indeed possible, the relevant democratic criteria require us to experiment continually with increasing the scope of democratic procedures. A critical attitude, therefore, is still called for in relation to authors who defend the democratic legitimacy of the current

⁸ David Held, *Democracy and the Global Order*, Cambridge, Polity, 1995, p. 23; Joseph Weiler, *The Constitution of Europe*, Cambridge, Cambridge University Press, 1999, p. 279. For some examples of earlier contributions to democratic theory that served to indicate the traditional restriction of this field to domestic politics, see Hans Agné, 'Democracy Reconsidered: The Prospects of Its Theory and Practice during Internationalisation – Britain, France, Sweden and the EU', PhD thesis, Stockholm, Department of Political Science, 2004, p. 1, n. 1; this article continues some arguments from ch. 6.

⁹ I put the word *delegated* within quotation marks to indicate that its object is somewhat different from that of delegation as defined in earlier theories.

structure of international and European politics (although the reasons for this must change if we accept the adjustments to democratic theory suggested below).

This article is divided into three parts. The first traces the concepts of delegation and alienation back to a procedural conception of democracy and describes various positions on 'international delegation' to be found in the literature. The second part examines the prospects for democratic states to recover such authority as they have delegated to international organizations. The third part explores the theory that delegation presumes the retrievability of authority, and offers the arguably better interpretation of 'delegation'.

JUSTIFICATION FOR NON-DEMOCRATIC PROCEDURES

A procedural conception of democracy is one concerned with *how* decisions are made, rather than *what* decisions are made.¹⁰ Definitions of democracy that stress majority voting, political equality, rational communication, general elections and direct participation – to name some ingredients commonly regarded as essential – can all be understood as belonging to this theoretical tradition (so long as they do not proclaim any particular policy to be more democratic than any other).¹¹

One problem arising in connection with any procedural definition of democracy is that, regardless of how minimally we define the democratic procedures in question, we are forced to concede that most decisions in our social, political and economic life are not actually made in accordance with them. Consider, for example, the view of Robert Dahl that a political procedure is democratic to the

¹⁰ In the context of the European Union, procedural conceptions of democracy are often portrayed as belonging to the input dimension of legitimacy; see Fritz Scharpf, *Governing in Europe: Democratic and Effective?*, Oxford, Oxford University Press, 1999.

¹¹ Excepted, of course, are those policies essential for upholding democracy itself. In democratic practice, this can be taken to mean that policies upholding the rule of law and furnishing constitutional protection for individual and minority rights have a special democratic significance. This can also mean depriving the majority – in the specific areas mentioned – of its otherwise general right to decide. See, for example, Michael Saward, *The Terms of Democracy*, Cambridge, Polity and Blackwell, 1998, pp. 53–7.

extent that it fulfils the criteria of political equality, effective citizen participation, enlightened understanding, final control of the agenda and inclusion of all adults ruled by the procedure.¹² It is certainly rare that this ideal is put into practice – including in states usually regarded as ‘democratic’. The procedures by which citizens elect a parliament, or by which a parliament holds its cabinet accountable, realize the ideal to a relatively high degree compared with the procedures of decision-making typically applied within private companies, trade unions, courts and independent agencies of public administration. The theoretical puzzle, then, is how to understand – from a democratic and especially a procedural point of view – the fact that apparently non-democratic procedures are widely applied within democratic states.

Dahl’s solution to this problem springs from his fourth criterion for democracy – that citizens possess final control over the political agenda:

According to this criterion, a political system would be procedurally democratic even if the demos decided that it would not make every decision on every matter, but instead chose to have some decisions on some matters made, say, in a hierarchical fashion by judges or administrators. As long as the demos could effectively retrieve any matter for decision by itself, the criterion would be met.¹³

As long as the democratic state is more powerful than any other organization in society – such that it can alter any and all policies promulgated by public or private actors – then there is no democratic problem arising in connection with the use of non-democratic procedures of decision-making within public or private administration.

The above argument develops a classical position in moral philosophy: namely that, while there are certainly laws and political procedures which should be observed, we cannot and must not alienate our capacity to make moral decisions.¹⁴ More recently, in what appears to be another development of the classical position, Henry Richardson has sought to specify such norms of public reasoning as he believes can prevent arbitrary domination by politically independent agencies – though he urges as well that ‘the existence of the agency and the general definition of its mission be subject to

¹² Dahl, ‘Procedural Democracy’, pp. 111–23.

¹³ *Ibid.*, p. 114.

¹⁴ See references in n. 4 above.

recurrent legislative review, revision, and rejection or endorsement'.¹⁵ Differing accounts of normative democratic theory converge, then, on one critical point: that it must be possible to retrieve the authority exercised by agencies that do not apply democratic procedures, and to transfer it to those that do.

Turning now to the application of this argument to the international context, I will use as my main example the European Union, the notorious democratic deficit of which has spurred a large literature and a deep concern with constitutional structures. As we shall see when we look at some more general arguments, however, this problem is far from being uniquely European. It was the German Constitutional Court, in the *Brunner* case, which supplied what is probably the most famous defence of the Union's constitutional structure in respect of democracy and delegation. In its verdict, the court recognized that the 'Maastricht Treaty . . . confers further . . . powers on European organs – which at Treaty level are not yet supported by a corresponding strengthening . . . of the democratic bases'. According to the court, however, the ratification of the Treaty still did not violate the right to democracy stipulated in the German Basic Law. This was because 'Germany is one of the "Masters of the Treaties" . . . which could ultimately . . . revoke . . . [its] adherence [to the Union Treaty]'.¹⁶

While hotly debated in its time, this argument has achieved the status of common sense in various political discourses. In 1995, for example, the Swedish government cited the German verdict when it proposed to parliament that Sweden join the EU; and several scholars have argued along similar lines that a preference for democracy does not mean that the 'democratic deficit' of the EU must be rectified.¹⁷ The bottom line of such arguments, of course, is that authority has

¹⁵ Richardson, *Democratic Autonomy*, p. 225.

¹⁶ As translated in Winkelmann, *Das Maastricht-Urteil des Bundesverfassungsgerichts*, pp. 781 and 798.

¹⁷ Proposition 1994/95: 19, Parliamentary Publications (Riksdagstrycket), pp. 19 and 34. For arguments inspired by the court, or at least very similar in their logic, see Sverker Gustavsson, 'Defending the Democratic Deficit', in Albert Weale and Michael Newman (eds), *Political Theory and the European Union*, London, Routledge, pp. 63–79; Mats Lundström, 'EU-inträdet och demokratin i Sverige', in Hans Agné, Mats Lundström, Giandomenico Majone and Fritz Scharpf, *Demokrati på europeisk nivå?*, Stockholm, Fritzes (Swedish Official Reports, SOU 1998: 128), pp. 45–74. The notes that follow give further relevant references.

been delegated rather than alienated to the EU. More recently, this assumption has been taken for granted in academic efforts to rehabilitate the democratic reputation of the EU.¹⁸ Scholars taking a principal-agent approach, moreover, have proceeded on this assumption as well – even as they have started paying attention to normative issues.¹⁹

Certain authors, furthermore, argue that the delegation of authority to the EU – or to any other international body – does not differ significantly from the delegation of authority currently found in domestic politics. Andrew Moravcsik, for example, makes normative use of such a claim to similarity: ‘EU officials (or insulated national representatives) enjoy the greatest autonomy in precisely those areas – central banking, constitutional adjudication, criminal and civil prosecution, technical administration and economic diplomacy – in which many advanced industrial democracies, including most Member States of the EU, insulate from direct political contestation [sic.]’.²⁰ In a similar vein, Miles Kahler suggests that the standard appropriate to an international agency of political economy is not that of a representative democratic institution, but rather that of a national regulatory agency or a central bank.²¹ Thus it is no more difficult, according to these authors, to justify an international regulatory agency by reference to the notion of delegation than it is to justify a national one.

The reason for delegating authority to a politically insulated agency is not just that democratic theory permits such a measure. Moravcsik justifies delegation by reference to the need for expertise, the need to protect citizens’ rights, and the need to encourage policies favouring the interests of diffuse rather than concentrated groups (the former being less likely to organize in defence of their interests).²² Giandomenico Majone, for his part, accounts for delegation in both positive and normative terms. In his positive analysis, he explores the theory that allowing a high degree of independence to

¹⁸ Majone, ‘Europe’s “Democratic Deficit”’; Moravcsik, ‘Is There a “Democratic Deficit” in World Politics?’.

¹⁹ Pollack, *The Engines of European Integration*, p. 410–14; Jonas Tallberg, ‘Executive Politics’, in Knud Erik Jørgensen, Mark A. Pollack and Ben Rosamond (eds), *Handbook of European Union Politics*, London, Sage, forthcoming, 2007.

²⁰ Moravcsik, ‘Is There a “Democratic Deficit” in World Politics?’, p. 356.

²¹ Kahler, ‘Defining Accountability Up’, p. 135.

²² Moravcsik, ‘Is There a “Democratic Deficit” in World Politics?’, pp. 344–7.

public agencies permits legislators to economize on their time and effort, to avoid public responsibility for policy failures and to seek out long-term solutions for a society in which electoral cycles would otherwise promote the adoption of less than optimal short-term measures.²³ When analysing the more normative side, he recognizes the importance of standard procedural requirements such as the creation and monitoring of agencies by democratic principals. However, he also suggests that the very substance of EU-law – which he describes as largely efficiency-oriented rather than redistributive – is such that independence from democratic procedures is democratically acceptable.²⁴

Returning to Moravcsik, we may perhaps interpret the second of his three arguments as follows: insulating agencies from democratic influence is democratically justified if so doing serves to protect rights that are necessary for democracy to function. While his argument, in this reading, does yield a democratic justification, it covers no more than a minimum of internationally promulgated policies. Moreover, none of the more generally applicable arguments suggested by Moravcsik and Majone are in themselves *democratic* justifications. In order to qualify as such, they would have to be supplemented by notions like those offered by Dahl and Richardson. This becomes clear if we imagine a situation in which 25 autocratic states have joined together in an international organization. We would not consider such an organization to be democratically legitimate just because we discovered its policies were made in accordance with the rule of law, or on the basis of far-reaching expertise; nor would we judge it democratic just because we found its policies favoured diffuse rather than concentrated interest groups,²⁵ or were aimed at achieving efficiency rather than redistribution. By the same token, democratic states must, where they exist, structure their common organization in such a way as to satisfy the ideals that distinguish them as democracies. Hence, it is worth critically examining the position that *the policies of an international organisation – even one as encompassing as the European Union – originate in a delegation from states, and are democratically legitimate to the extent that the participating states are democratic*. Of course, some of the views presented above are more

²³ Majone, 'Europe's "Democratic Deficit"', pp. 16–18.

²⁴ *Ibid.*, pp. 20–8.

²⁵ Or perhaps favoured the latter *no more* than the former.

elaborated than that. But for delegation theorists seeking to justify international organizations on a *democratic* basis, the italicized proposition is likely – as normative democratic theory stands today, according to prominent scholars such as Dahl and Richardson – to furnish the most rational interpretation available. Or, as Popper would have put it, this is ‘a position really worth attacking’.²⁶

DELEGATION AND INTERNATIONAL POLITICS

Earlier democratic theory appears to have ignored the fact that two fundamentally different relationships are involved when democratic states transfer authority, revocably or not, to national and international institutions respectively. In the first case, a single principal authorizes an agent to act while exercising sole control over said agent; in the second, a number of principals must apply collective procedures – which typically require a degree of unanimity – to exercise control over their common agent.

When examining the implications of this difference, we should recall that it does not coincide altogether with that between national and international politics. There are national cases of the second kind, as when individual citizens empower a common state, and international cases of the first kind, as when various institutions of the European Union delegate the implementation of directives to local authorities. However, such cases need not concern us here. States are the only relevant actors whose political procedures measure up to present-day standards of democracy. Instances where the delegator is an international agency are therefore of little normative relevance, since international agencies will in any case not be able to furnish the requisite democratic justification. Furthermore, when democratic legitimacy is claimed for international organizations today on the grounds that an equivalent delegation is currently accepted within national politics, the fitting analogy is not with upward delegation at national level, as when individuals allocate powers to a common state, but with downward delegation at said level, as when a government or parliament creates a central bank or a regulatory agency. To scrutinize this argument we must therefore focus on the similarity or

²⁶ Karl Popper, *The Poverty of Historicism*, London, Routledge and Keagan Paul, 1957, p. 3.

difference between transferring authority upwards to international institutions and transferring authority downwards to national institutions.

To illustrate the main contrast, let us begin with an example taken from the national context (whence the theory of delegation emerged, after all). Consider the transfer by a democratic state of the authority to make decisions about medical treatment. If the recipient of this transfer is a state-run national hospital, the democratic state will have several effective instruments at its disposal to control the manner in which said authority is exercised. By their own decision the supreme political bodies of the state can decide, for example, to limit the hospital's budget or expand it, to install certain officials or remove them, to furnish new facilities or close old ones; they can allow for certain medical treatments, require specific forms of organization; and so on. The point is: when a state grants authority to a national hospital it can control the policy undertaken by enacting laws *at any level of detail*. For this reason, we may say that authority has been delegated rather than alienated. Such a transfer meets the basic criterion for democratic legitimacy cited above.²⁷

Now let us consider an international version of this case. Here, the recipient of the transferred authority is a state-run international hospital – a hospital constituted by an international treaty ratified in national parliaments. Each signatory state claims a substantial, and perhaps even equal, degree of control over its operations. In such a case, some of the control instruments possessed by each democratic state can only be used at a significantly higher cost in comparison with the equivalents of a national case, while most instruments simply cannot be used at all. No single state, however unified and centralist, is able by its own decision to expand the hospital's budget, or to limit it, or the like. This is because, according to international law and the principle and reality of sovereignty, such decisions must be taken by agreement among all the states involved. In contrast to the case with the national hospital, no single state is able here to determine the medical policy *at any level of detail*. The only thing that an individual democratic state can possibly do by its own decision, depending on how the international treaty is formulated and how powerful the state, is to withdraw from the international hospital altogether. But that, of course, is a most limited method of control, as compared to

²⁷ Richardson would supplement this requirement with others, though.

the panoply of instruments available to the democratic state in the case of a national hospital. If the state withdraws altogether, certain forms of medical treatment will become unavailable to its citizens; alternatively, the state will have to build a new hospital on its own and thus consume resources that could otherwise have been used for medical treatment. Either way, therefore, the state in question faces significant limits on the control it can exercise over medical policy.

Clearly, the democratic justification applying at the national level – that the democratic state wields certain instruments of policy control – is to some degree absent on the international plane. So while the national case may be one of delegation, this does not mean the same is true at the international level.²⁸

In order to provide a more determinate assessment of the democratic legitimacy of international organisations, it may be instructive to clarify two further points: (1) what we mean by authority; and (2) what we mean by recovering authority. In regard to the first, we shall consider two possibilities: (1a) that authority is a juridically specified decision competence, and is independent of the actual content of any given decision: like, for example, the competence to decide who shall be allowed to trade with whom, or whether an expansionary or contractionary monetary policy is to be pursued among major trading partners; and (1b) that authority represents power over an actual set of decision alternatives, and is determined by the content of said alternatives: like, for instance, the power to decide that peoples with rich natural resources shall be allowed to trade with peoples possessing advanced technical skills, or that the effective rate of interest among major trading partners is to be set at 4 rather than 2

²⁸ It bears recalling here that some variation may be found between national cases. As compared with a unitary state, for example, a federal state would appear to find it harder to keep ultimate control over such authority as it has delegated to regional sub-units. The experience of federal states, accordingly, ought to be closer than that of unitary states to the international pattern. However, the major difference still remains. Sovereign states, whether federal or unitary, retain ultimate control over their territory – by force if necessary: a prerogative lacked by the regional sub-units of federal states. Hence the latter have far fewer opportunities when confronting their states over authority than states have when confronting international organizations. Still more important, however, is the fact that transfers of authority from federal to regional level within democratic states require far less in the way of democratic justification, inasmuch as the regional sub-units – in contrast to international organizations – qualify as relatively democratic, due to their internal political procedures.

per cent. As for the second point (what we mean by retrieving authority), we shall distinguish two interpretations: (2a) that retrieving authority entails redistributing the power to make decisions from an institution that is less procedurally democratic to one which is more so: as, for example, when a policy developed by civil servants is revised by a democratically elected parliament; and (2b) that retrieving authority means influencing the policy of a procedurally less-democratic institution in the direction of the norms laid down by a procedurally more-democratic institution: as, for example, when a democratically elected parliament enacts new laws so as to influence the decisions made by courts or private companies.²⁹ The section that follows takes the first interpretation of the meaning of authority as a given (1a), while considering both interpretations of what it means to recover authority.

Recovering Juridical Competence

What prospects does a democratic state have for *taking back* a juridical competence from an international organization? Very probably, the competence can indeed be effectively retrieved. The state can ultimately secede from the international organization in question, and introduce new national legislation in turn, although secession from an organization such as the EU may be enormously costly.³⁰ The difference between the national and international cases lies rather in the fact that, in the case of the latter, a state may be left with no other option than to retrieve the entirety of the competence in question, even as it wishes to retrieve only a portion of it. Let us see why.

At the international level a proposal must be agreed upon by all states, or at least by a sufficiently strong state or group of states, in

²⁹ Dahl comes close to interpretation 2a in his article 'Procedural Democracy', and to interpretation 2b in his more exploratory work, *Dilemmas of Pluralist Democracy*, New Haven, CT, and London, Yale University Press, 1982.

³⁰ Note that the validity of this argument does not depend on the controversial classification of the EU as an international organization. Many analysts regard the EU, of course, as something much stronger than a mere international organization. On such an interpretation, however, the ultimate claim being made here – that the EU's authority cannot be democratically justified by reference to the recoverability of authority – is actually strengthened.

order to be adopted. Within democratic states, by contrast, public policy is enacted through majority rule in the supreme political body, or else by a directly elected president. Some exceptions can be found, but generally this is the case. Hence, a state seeking to recover only the competences of its own choosing from an international organization can easily be blocked by another state; the only change it is guaranteed to achieve is outright secession. Moreover, this limit on the capacity of states to control international institutions has been codified in international law. According to paragraph 60 of the Vienna Convention of 1969, if a state breaks an international treaty unilaterally (as it may be forced to do if it seeks to recover only the competences of its own choosing), the other parties to the treaty are no longer bound to observe said treaty – at least in respect of their policies towards the treaty-breaking state (*viz.*, the other states are given full freedom to determine how much will in fact be retrieved).

Turning then to the second interpretation (2b) of what it means to recover authority, that is, effectively to influence decisions made by another agent, the difference between the national and the international case can be seen as representing two different structures of principals and agents. The international situation is one in which several principals control a single agent; at the national level, by contrast, a single principal controls one or more agents. Only in the former case are there transaction costs for sharing information and coordinating policies between different principals. The degree to which policy outcomes at the international level can be controlled is accordingly limited (as we saw in the example of the hospital above). While some international institutions may help principals to coordinate their policies, for example, the European Council, it is substantially more difficult to coordinate policies among several governments – all of which claim to represent a sovereign state – than it is within a single government. Moreover, the single national principal has a wider set of alternative alliances, due to the plurality of potential agents; indeed, it can even create new agents by its own decision. Internationally, by contrast, the creation of every new agent must be agreed to by all the other states. As in any power struggle, having a wide range of alternative alliances is an asset.

On both interpretations of what it means to recover authority, then, the conclusion is the same: the fact that delegation exists on the national level cannot be taken to imply that it exists internationally.

Retrieving Power Over a Set of Alternatives

We may now turn to the second interpretation of authority, according to which it represents power over a specific set of alternatives (1b), rather than a juridically specified competence (1a). A decision alternative may involve, for example, setting conditions for trade among peoples differing in respect of natural resources and technological development, or choosing whether to undertake expansionary or contractionary monetary action among major trading partners. A juridically specified competence, by contrast, need not involve any requirements as to the actual content of decisions; it is not necessarily violated, therefore, if certain policy options are absent in practice.

The decision alternatives available to international organizations do not typically exist within individual member states. No state is able, by its very nature, to provide for as ramified a division of labour as the World Trade Organization can do. No national central bank can manipulate the demand of European consumers to the degree that the monetary institutions of the European Union can. Hence the authority of these organizations – interpreted here as their power over decision alternatives – cannot in truth be retrieved by procedurally democratic states.

This argument can be easily generalized to all decisions affecting more than one country. If a decision alternative effectuated by an international organization among its members were to be recovered by a specific state, then this state would have to occupy the territory of all the other members of the organization in question; otherwise, it would not gain the power over decision alternatives that the international organization had in fact had. Of course, the state in question might retrieve the authority that the international organization had in some sense exercised *over its own population only*, but that would be something different – a far cry from the authority wielded by the international organization: namely, the power to decide policy *in or among all of the member states*. Yet even were someone to defend the peculiar view that the occupation of other countries is an element in democratic politics, it would not solve the problem identified here: in the strange instance at hand, after all, the power over decision alternatives would be restored to the people of a single state only, which would render the people in all the other countries completely alienated from the power exercised over

them. The conclusion is simple: the power over alternatives wielded by an international organization can never be retrieved by procedurally democratic states.

The reality that decisions taken internationally have effect in more than one country is perhaps most evident in relation to the European Union: the doctrines of legal supremacy and direct effect have been operating in that body for several decades. Yet to a relevant extent, the same can be said of all the major international organizations, such as the International Monetary Fund, the United Nations and the World Trade Organization. Only for the most powerful states (or the most roguish ones) is a persistent refusal to comply with important decisions a real option. Even such states, moreover, may find that an act of dissent serves to reduce their assets if they wish to propose binding agreements in the future.

Here it may be objected that the only power that cannot be restored to a given democratic state is the power to affect individuals living in a territory controlled by another state – and, of course, the alienation of that specific power from democratic procedures should not be interpreted as a democratic problem. One can only agree with the latter part of this objection: the democratically relevant capacity on the part of a collective actor is the capacity of said actor to affect the individuals who constitute the collective itself, not individuals in general.³¹ However, a real democratic problem – in the view of Dahl and Richardson, among others – arises when an international organization develops a policy that *only* exists because of the international organization. Such policies would seem to come in two broad categories: policies made possible by the efficiency gains deriving from scale and policies whose efficiency in one country depends on what happens in other ones. Put more precisely, the actions that cannot be justified by traditional theories of democratic delegation are those that can be undertaken by a procedurally democratic collective actor

³¹ Everywhere in the literature – without exception, it seems – democracy is regarded as a political system in which a population rules itself, and not one in which one population exercises rule over another (for just one example, see Robert Dahl, *Democracy and its Critics*, New Haven, CT, Yale University Press, 1989, p. 1). It would distort the concept of democracy to the point of incoherence to suggest that, other things being equal, the level of democracy enjoyed by a people automatically rises when the people acquires the capacity to determine the politics of another.

to affect its constitutive individuals *only* if it transfers authority to a procedurally non-democratic international agency.³²

It might also be objected that, irrespective of how international politics is organized, there is generally some added value for a state in joining an international organization, and so even democracies have no better option than to stay within their international organizations. We must indeed recognize, I believe, that international organizations can promote values other than democratic ones. However, the fact that internationally promulgated policies allow for a greater range of, and perhaps more valuable, decision alternatives, is not enough to alleviate our democratic concerns. Even if all of the states taking part are better off with such policies than without them, the case is still one of alienation rather than delegation as long as the decision alternatives in question cannot be retrieved by procedurally democratic institutions. If this was not accepted, we would have to subscribe to the strange conception that democracy is limited to such policies as can be achieved in small-scale polities or without coordination across national boundaries; if ever such a nation-state-centred conception of democracy existed, it would have to be given up today in the face of globalization and similar processes.

It is true that, according to the second interpretation of authority (1b), certain democratic problems are also likely to arise in connection with the transfer of authority to independent agencies within states, as well as to private firms operating internationally. It is not inconceivable, for example, that some of the economic prosperity found in contemporary capitalist democracies would disappear if a large share of the authority exercised by market actors were retrieved from them, and placed instead in the hands of institutions fulfilling to a greater extent the criteria of procedural democracy. However, this does not counter the argument that there is a significant difference, even on the power-oriented interpretation of the theory, between national and international institutions. In the national case, after all, the possibility clearly remains for procedurally democratic

³² The fact that such a power could never exist at the level of the nation-state is irrelevant. The criterion of democracy, as specified by Dahl and Richardson, is not that only such powers as can be exercised in nation-states must be democratically controlled; rather, *all* significant powers must be democratically controlled.

parliaments to retain power over decision alternatives for themselves, as we see in the case of publicly owned companies that are market competitive under policy regulations enacted by parliaments, while in the most prominent international cases there is simply no such possibility. As previously mentioned, no state is able to provide for as ramified a division of labour as the European Union or World Trade Organization is able to do; accordingly, the decision alternatives for which these organizations were established cannot be recovered by procedurally democratic states.³³

The Myth of International Delegation

We have seen that the possibilities for delegating or alienating authority vary as between national and international contexts. Although the potential for normatively justifying independent agencies depends on how we interpret *authority* and *retrieving authority* more precisely, the international context is, on all interpretations, imbued with difficulties that do not exist on the national level (where the normative theory of delegation was first developed and became accepted). The suggestion, then, that politically insulated international agencies are democratically legitimate because equivalent claims are commonly accepted for national agencies must be rejected as severely misleading.

Moreover, the authors who have done the most to develop the notion of democratically acceptable delegation, Dahl and Richardson, are themselves hesitant to suggest that the relevant principles are generally observed even in national politics. Against the background of the far greater difficulty – in some cases even the structural impossibility – of recalling the authority allocated to *international* agencies, the only fair conclusion would seem to be that the conditions under which insulated agencies can be legitimized in terms of recoverable authority are absent in cases where states transfer authority to international organizations.

³³ The same democratic problem does *not* apply in relation to multinational companies, inasmuch it is possible for a procedurally democratic state to run a multinational company, as surely as any private actor actors can do (except under the provision of certain EU or WTO regulations, but here again the democratic problem arises in connection with international organizations rather than multinational companies).

As we have just seen, furthermore, international organizations appear most illegitimate from a democratic standpoint if we define authority in terms of the power over alternatives, rather than as a juridically specified competence; still, the power-oriented interpretation is the more appropriate: democracy is commonly acknowledged to be a question of the power rather than the law of the people. This should strengthen the case for rejecting the view that the politics of international organizations originates in a delegation of authority from the state level, and is democratically justified to the extent that the states involved are democratic. This view is incorrect: it wrongly assumes that the authority conferred on international agencies can be retrieved by democratic states, or effectively influenced through democratic procedures.

SUGGESTIONS FOR DEMOCRATIC THEORY

What should we conclude from the preceding analysis? That there is no such thing as the *delegation of authority* to international organizations, in the sense found at the level of national politics? Or that a certain theory of democratic delegation is unable to account properly for the object of study – international delegation – which does in fact exist and which is only waiting to be identified and described in appropriate theoretical terms? I mentioned at the outset that, since most theories of democracy have been concerned only with the domestic politics of individual states, it is particularly important in this context to consider the second possibility. It may be useful to examine the theories of Rousseau, Dahl, Richardson and others in their own right; however, since any theory can ultimately be assessed only against its rival, I will begin with a few preliminary suggestions for an alternative democratic theory of ‘delegation’, and then compare said alternative with the original.

Definitions and Ideals

The definitions of democracy that seem to be most widespread today tend to stress principles like majority voting, political equality, or communicative rationality; yet the argument below can be understood more readily on the assumption that democracy is a kind of

politics aimed at offering as many people as possible the opportunity of exercising as much autonomy as possible.³⁴ The implications hereof for the concept of ‘delegation’ may be tentatively formulated in the following manner: *autonomy is ‘delegated’ by the people – rather than alienated from them – to the extent that no more persons could participate in its exercise while maintaining as much autonomy as possible for as many people as possible.*

The concept of autonomy used here may be defined as the possibilities of an actor – individual or collective – to take action while being free from domination by others.³⁵ Roughly speaking, an actor is more autonomous if able to choose among decision alternatives that are many and various, rather than few and similar. For example, people are more autonomous if they are able to decide whether to have 30, 40, or 50 per cent of their common GDP allocated through the public sector, than if they must settle for either 40 or 45 per cent; and they are more autonomous if able to choose an occupation among the professions of a modern society, than if bound to follow in the footsteps of their parents. Such a notion of autonomy would seem to imply that actors are more autonomous if they are not forced to comply with collective decisions, but also that they are less autonomous if they lack access to effective means of collective action.

³⁴ For an elaboration of this idea, see Agné, ‘Democracy Reconsidered’, pp. 302–18. Similar notions have recently made their way into discussions of international or global democracy. The draft of the Constitution for the European Union, for example, begins with a quote from Pericles’ Funeral Oration, as told by Thucydides, to the effect that democracy is to be defined in terms of the greatest number, rather than the majority or some principle of equality: ‘[o]ur constitution . . . is called a democracy because power is in the hands not of a minority but of the greatest number’ (available at <http://europa.eu.int/>, p. 1). Another example is the concept of the multitude used by Hardt and Negri to capture the prospects for popular power in globalizing social relations; see Michael Hardt and Antonio Negri, *Empire*, Cambridge, MA, Harvard University Press, 2001.

³⁵ For similar, albeit distinct, conceptions of a democratically relevant action capacity, see Held, *Democracy and the Global Order*, p. 100; Fritz Scharpf, ‘Economic Integration, Democracy and the Welfare State’, *Journal of European Public Policy*, 4: 1 (1997), p. 28; Kjell Goldmann, *Transforming the European Nation-State*, London, Sage, 2001, p. 156. For a comparison, together with arguments in support of my deviation from such notions, see Agné, ‘Democracy Reconsidered’, ch. 3, sect. 3.1.2.

Actors would appear to be more autonomous if they possess substantial resources, to which system enlargement and specialization are generally positive, but also less autonomous if their part in the political whole is relatively unimportant, and decreasing to boot, which is another concomitant of system enlargement and integration with others. Finally, expertise in policy-making is likely to yield efficiencies, and thus to widen the range of possible action, though the procedures through which expertise is achieved can also be used to obstruct the preferences of the public.

The democratic justification for institutional arrangements along these lines – for example parliamentarism, the separation of powers, reliance on market principles, delegation to insulated agencies, or any combination of these – would then have to confront various dilemmas and establish that, under given conditions, no other arrangement is capable of providing a greater range of decision alternatives for more people. In the case of ‘delegation’ to insulated agencies, the idea is that the autonomy of all can be strengthened by reducing the participation of some. The criterion can then be stated more precisely so as to address the issue of participation in particular, as in the italicized proposition above. Some readers may also wish to consider possible qualifiers in the case of the participation element, for example regarding the representativity or civic virtue of those participating. In order to focus on the difference between national and international institutions, however, I shall disregard such questions here. When considering ‘delegation’, moreover, I shall concentrate for the sake of lucidity on autonomy as a collective attribute, although, in fact, the relevant subject in moral terms arguably consists of persons who may prefer any mixture of individually and collectively performed actions.

As understood here, the concept of ‘delegation’ is not intended to replace even the larger part of what has been said about delegation by the authors cited above. For the moment, my purpose is not to make any suggestions at all regarding the relevance for democratic legitimacy of *public reasoning* as specified by Richardson, or of *judicial and professional review* as stipulated by Majone, or of the *unbiased representation of social interests* as understood by Moravcsik. What the italicized criterion aims at replacing is only the most generally shared requirement of democratically acceptable delegation: namely, that the people or their fairly elected representatives must be able to retrieve such authority for themselves as they have

previously given away.³⁶ The claim to be defended here, then, is that a politically insulated agency can be democratically justified if it succeeds in enlarging people's autonomy, even in cases where authority cannot be recovered by any democratic body.

Notwithstanding my disagreement with earlier contributions, the notion of 'delegation' set forth here protects about the same ideal as does the original definition. In both cases, the ideal is that autonomy or authority shall rest with the people. This common ground is worth defending, I believe, not least because preventing the alienation of power from the people is necessary though insufficient to maximize individual autonomy. The difference at the level of ideals is that the principle of 'delegation' presented here introduces a quantitative element. It assumes that the autonomy of people – or of the people – is a matter of degree, and that institutions should be so designed to give people as much autonomy as possible. The theory of delegation as retrievable authority, in contrast, treats the autonomy or authority of people as a given, which is unaffected by delegation and destroyed by alienation.

General Applicability and Practical Usefulness

One important difference between the two ideas concerns the institutional location of authority or autonomy. According to the traditional theory, *political authority* is fundamentally and originally located in a unique institution, whence it is distributed to others; whereas, in the alternative conception featured here, *political autonomy* is located originally and fundamentally in the plurality of institutions involved in its actual exercise. Because of its weaker assumption about where political autonomy must be located, the alternative theory of 'delegation' can ignore the question of whether authority or autonomy is transferable from one institution to another. The question of transfer only arises if the autonomy of particular institutions must in some fundamental sense be reducible to the autonomy of a single state. Furthermore, since the criterion of 'delegation' involves no

³⁶ My use of the term 'the people' does not presume the existence of definite and unchangeable peoples. For an elaboration of the concepts inherent in 'delegation' in connection with efforts to define demos or citizenship, see Hans Agn , 'A Dogma of Democratic Theory and Globalization: Why Politics Need not Include Everyone it Affects', *European Journal of International Relations*, 12: 3 (2006), pp. 433–58.

requirement that authority be transferable from one unit to another, the difference in strength among units becomes unimportant for its realization in practice. Had the theory required that political autonomy be transferable from one unit to another, it would indeed have been different to apply it in a system where the units are more or less equal in power, on the one hand, and in a system where one unit is superior to all others, on the other. Hence the difference between national and international politics – which among other things is one of differing power structures among the actors in each system – does not condition the usefulness of the theory of ‘delegation’. Rather, it can be applied equally well at both national and international levels.

The fact that the traditional theory has a relatively narrower field of application makes it less useful for practical political purposes in the international context. The only recommendation we can derive from its main proposition regarding the international field – that democratic delegation to international organizations is impossible – is that international politics should either be abandoned altogether or else subsumed under a democratic world government.³⁷ However, democratic theory can do much better than just offer virtually utopian recommendations; indeed, it should help us discriminate among less than perfect alternatives. This, I believe, is what the theory of ‘delegation’ outlined here can accomplish. In the following paragraphs, I intend to show how.

To uphold the two criteria, participation and autonomy, one method is to introduce piecemeal democratization into the operations of a given institution, and to assess resulting changes in the level of autonomy in the policy area of that institution.³⁸ If a larger number of people can be involved in making policy without endangering either their collective or individual autonomy, then this larger number of people should in fact be involved; otherwise policy-making functions will be regarded as alienated from the people, and,

³⁷ One may still contemplate various measures to strengthen national parliamentary control over government international activities. However, such efforts will never be able to transcend the structural difference between national and international politics and will hence never approximate the requirements of a democratic justification.

³⁸ For empirical methods to estimate political autonomy in the area of budget policy, see Agné, ‘Democracy Reconsidered’, ch. 3.

as such, among democrats, without normative justification.³⁹ Though the possible tension between individual and collective autonomy remains to be accounted for, this way of reasoning gives precise guidance as to whether at least some relationships should be regarded as delegation or alienation.

I believe almost any institution might be interrogated with an eye to this criterion, but let us focus here on the European Central Bank. On the one side, we have those who hold that procedural democracy leads to short-termism; on the other, those who insist that the people or their elected representatives must never be prevented from changing policy in accordance with changing opinions. To ascertain whether or not this institution meets the criterion of 'delegation', we must ask: does European monetary policy reach its maximum range of possible action through the present organization of the European Central Bank? Or could more people be involved without significant losses in respect of price stability and economic growth? Various measures to improve popular involvement are worth considering here, for example, increasing the number of executive-board members, making them accountable to other assemblies, shortening their terms of office, abolishing treaty clauses that forbid governments to instruct them, simplifying the procedure for changing monetary-policy targets, publishing earlier minutes of meetings of the executive board, and so on. To the extent that any of these changes can be undertaken without significantly reducing the bank's efficiency in attaining its aims, then the authority conferred on the bank should be regarded as alienated from the people rather than delegated by them, in accordance with the principle outlined above.⁴⁰

³⁹ To assess the democratic legitimacy of a particular institution by this method, it is *not* necessary to estimate the effects on individual and collective autonomy in all domains of human life. When the democratic legitimacy of a particular institution is challenged, the issue will be settled by assessing autonomy in the specific area to which that challenge is calling attention. In the case of an international free-trade regime, for example, the autonomy that should be assessed may concern taxation levels and consumer prices. Hence the theory proposed here is certainly not rendered impractical by a requirement that, in order to judge the legitimacy of an institution, one must begin with assessing every possible kind of autonomy.

⁴⁰ To the extent that none of these changes can be undertaken without reducing efficiency, our judgement in terms of delegation or alienation will also depend on the precise balance we choose between 'as many as possible' and 'as much as

Supporters of the current monetary regime will assume, of course, that none of the above changes can be undertaken without losing control of inflation to some extent, wherefore the autonomy of European citizens indeed requires, in respect of monetary policy, that the current structure of the institution be preserved. I do not argue against this position. I propose certain tests that the bank must pass in order to be democratically justified – not which the bank has already failed. My purpose is only to show that the theory of ‘delegation’ is indeed able to generate piecemeal reforms along democratic lines. Nor does the theory rescue us from the possibility that international agencies are injurious to democracy. It has not reconciled international politics with democratic theory by lessening the requirements of democracy, but by suggesting ways in which we must experiment continually with increasing the scope of democratic procedures. The idea of ‘delegation’ can hardly be relied upon, therefore, to furnish any definite democratic justifications for present-day international organizations; after all, experimentation with increasing the scope of democratic procedures is not a striking feature of international organizations.

Excluding Arbitrary Domination

According to the criterion of ‘delegation’, limits on democratic participation are justified if they serve to increase autonomy for as many people as possible. Convinced democrats may fear that this proposition opens a Pandora’s Box, encouraging forces who are not in favour of democracy but who wish to exploit its rhetorical potential, in order to reduce the political influence of ordinary people. For example, anti-democrats could affirm the existence of a trade-off between participation and autonomy, and then derive justification from the theory presented here for taking every political decision away from the people and their elected representatives.

possible’. There is nothing problematic about letting this judgement depend on individual interpretations of democracy. Democrats need not all agree on the precise balance to be struck between popular involvement and autonomy, so long as they all favour both criteria and do not allow the realization of the one to erode that of the other significantly.

However, this would not represent a fair application of the theory. For there are two criteria here that must be met: participation and autonomy. Accordingly, the principle suggested would not justify policies allowing very little participation (or none at all). Even if, for example, some kind of autocracy were to score higher on autonomy than democracy does, such a system could not be justified on the basis of a principle requiring popular autonomy *and* participation. The fulfilment of the principle would require, rather, that each criterion be met as fully as possible, and that – in the event of their competing with each other – neither be permitted to triumph over the other.

Furthermore, the anti-democratic interpretation rests on a mistaken conception of autonomy. If, for example, a politically insulated agency were to ignore certain decision alternatives that would have been featured in a more inclusive procedure, and assuming the same decision alternatives would have been available to a more encompassing group of people, the conclusion would have to be that a greater number of people⁴¹ had been deprived of the possibility of acting in the relevant area. This would be sufficient to declare the action of the agency inconsistent with the criterion defended here. For the realization in *practice* of the principle that an independent agency must expand rather than diminish the autonomy of as many as possible I share with Richardson the view that public reasoning about the ends of policy, as laid down in overarching legislation, is an important element.⁴²

⁴¹ 'Greater' in comparison with the group of people who are included in the procedures of the policy-making agency.

⁴² Richardson (*Democratic Autonomy*, p. 217) also adds the condition that the practice of independent agencies must reflect the will of the people, as laid down in overarching legislation. The concept of the will of the people is useful when assessing constraints of autonomy, but it should not be brought into the very definition of democracy. To make the degree of democracy dependent on what people want is not consistent with the important view of democracy as neutral among decision-alternatives (see, for example, Kenneth May, 'A Set of Independent, Necessary, and Sufficient Conditions for Simple Majority Decision', in Brian Barry and Russell Hardin (eds), *Rational Man and Irrational Society?*, Beverly Hills, Sage, 1952/1982, pp. 299–301; Anthony J. McGann, 'The Tyranny of the Supermajority. How Majority Rule Protects Minorities', *Journal of Theoretical Politics*, 16: 1 (2004), pp. 53–77. If a policy P cannot for some reason be undertaken this would, according to a will of the people theory of democracy, imply a defect of democracy only if people want to pursue P, not if they do not – and hence, in some situations, democracy would be regarded as increasing simply because people change their political opinions from having desired the pursuance

That said, the concept of autonomy does indeed tolerate some divergence of views among citizens and their elected representatives or officials. For the sake of public rationality, which may itself be seen as an element of a somewhat broadened concept of autonomy, we ought temporarily to accept such differences between decisions made by insulated agencies and those preferred by the people as are conducive for deepened public deliberation. It may also be that there are preferences among the people that cannot all be realized at the same time. But that does obviously not represent a defect in democracy. What 'delegation' requires is that the range of action is expanded for as many as possible, not that every thinkable action can be performed.

SUMMARY CONCLUSION

According to a widely shared view, democratic states are able to delegate authority to international agencies; moreover, this capacity has been drawn upon to justify non-democratic procedures on democratic grounds – even when the international organization in question is as powerful as, say, the European Union. By contrast, I have argued in this article that the structure of international politics, unlike that of national politics, is such that the authority exercised by non-democratic agencies is hard or impossible to return to democratic hands. This implies not only that several of the attempts made at democratically justifying the politics of international organizations have been untenable, but also that the received theory of delegation as involving the recoverability of authority is all but incapable of identifying reforms that might serve to democratize international politics. To remedy this incapacity, I have sought here to outline and to defend an alternative theory of democratic 'delegation', one that applies equally well to national and to international politics. The kernel of this alternative theory is the claim that autonomy is 'delegated' by the people, rather than alienated from them, to the extent

of P to indifference over this matter. As a theoretical position this appears to be strange. People changing their political views is a rather natural ingredient of democracy and certainly not injurious to it.

that no more persons could participate in its exercise while maintaining as much autonomy as possible for as many people as possible. This theory does not lessen requirements of democracy, but rather suggests ways in which we should continuously experiment with increasing the scope of democratic procedures.