

## Dewey, Democracy, and Democratic Experimentalism

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Dewey's approach to the problem of organizing reform of democracy focused on rethinking the ideal of democratic participation, or, backing up a step, the conditions of communication eventually shaping it. He left the design of institutions to advance joint problem solving and individual development to the outcome of this process. To the extent that he had concrete institutional plans they vacillated in focus between the society as a whole and the immediate local community. Democratic experimentalism looks to connect these levels to correct the defects of an exclusive focus on either.

### 1. Introduction

Dewey's enduring achievement was to present a compelling account of the mutual constitution of the individual and society, struggling together to extend the limits of their knowledge in response to surprising failures of what they thought they already knew, and to establish an ideal of democracy as that form of self-government which, under ever new circumstances, affords the greatest possible scope to the social intelligence of problem solving and the flourishing of individual character as its condition and product. Dewey shares with Marx the idea of the sociability of production and the deformation of the self through its denial, with Rawls the idea of recognition of the full, individual humanity of fellow citizens as the first and most fundamental constraint on political order. Yet he had a sense of the moral and political malleability of the technical world – a recognition that the organization of production conditions politics yet is also profoundly conditioned by it – and a congenital understanding of the individual in democracy alien to the former. He had an intellectually productive absorption in the lived interaction between individual and society alien to the latter. In an uncertain world, where innovations in production and changes in individual life courses and gender roles upend each other, settled forms of assuring social solidarity fail, and traditional representative democracy seems more an institutional casualty of these changes than an instrument for an effective public response to them, committed democrats will want to learn from Dewey.

Yet when it came to questions of institutional design – of specifying how various domains of activity might be organized to advance joint problem solving and individual development – Dewey had, to the evident irritation of some of his most ardent admirers and closest readers,<sup>1</sup> and apart from limited and ultimately vexed observations about schooling, next to nothing to say. His reticence in these matters is a puzzling double default. First there is the very general (but in debate infrequently remarked) absence in Dewey's work of discussion of what might be called pragmatist institutions. No one understood better than Dewey that habit, or experience accrued into unnoticed assumptions, enabled action by allowing the concentration of attention on troubling violations of (habitual) expectations; no one understood better than he that habit could also harden into routine, making unnoticed assumptions inaccessible to revision and trapping us in experiences only possible if we do not attempt to scrutinize them fully in the event. Dewey stressed as well the mutual dependence of individuals and institutions, and the way the stunting of the one impoverished the other. Institutions and individuals thus had to change together or not at all. Given all this it is puzzling that he did not pose the question of how to design institutions that reduce the chance of organizational habits congealing into limiting routines, or that can detect and dis-entrench routines that have become obstructive.

Second, there is the more specific and more frequently noted absence of discussion of the design of democracy itself, of institutions of public choice serving the ideal of democracy as enabling individual flourishing, and adapted to the circumstances of the day. Dewey was nothing if not a fallibilist. He held that inquiry in its exemplary form – in the laboratory – was a process of continuous self-correction, of learning from mistakes. The kind of joint searching or social inquiry he urged outside the laboratory would be, if anything, more prone to error and more in need of correction. More generally he insisted that ends and means were mutually transformative – as in art, where the painting becomes the picture – or, put another way, that theories and first principles were inevitably redefined in the process of applying them. What he held in general he held to be particularly true of democracy; one of his recurrent arguments was that the means that serve democracy, and its proximate ends, must be rethought as circumstances change. Horseback empiricism sufficed to show that in this he was right. The mismatch between the 19th century institutions of American democracy, informed by if not premised on a citizenry of small holders, and the mass-production, mass-consumption society of large firms and associations of the US in the 1920s was palpable. The rise of fascism left no doubt that democracies could make or abide horrific choices. The bureaucratic, centralizing tendencies of the New Deal troubled Dewey, suggesting that he distinguished between decisions authorized by democracy and organizational decisions that served his democratic ideal. In the background, but surely not out of mind, was the continuing public controversy over judicial supremacy and the people's relation to the constitution that generally shaped the Progressive Era.<sup>2</sup> Yet, though understanding and defense of democracy and the question of its design

seemed indissolubly linked in fact and by the lights of his own ideas, Dewey had as little to say about the mechanisms for avoiding and correcting error in the institutions of democracy as in the design of institutions generally.

Democratic experimentalism addresses the problem of the design of pragmatist institutions and cognate problems of making and revising democratic decisions. The aim is not of course to try to say what Dewey might have or should have said, and still less to chide him for not saying it. Rather the goal is to make conceptually more cognizable and empirically more plausible a form of democracy, situated as today's must be in the uncertain flux of experience, sharing Dewey's aspiration of linking adaptive social learning and the greatest possible development of individuality, and assuming (from a combination of conviction and the assessment of experience) that these goals cannot be achieved by harnessing market mechanisms to the largest of public purposes.<sup>3</sup>

The design of pragmatist institutions is the theme of Bill Simon's contribution to this symposium. He shows that private firms and public-sector institutions have, independently, hit upon mechanisms by which small breakdowns in operations trigger a wide ranging but not unfeasibly open-ended search for the deep or root causes of the disruption, and when warranted, a revision of the procedures that led to it, or even the goals from which the procedures were derived. A leading private-sector example is the Toyota production system, where the removal of buffer inventories (the shift to just-in-time production) means that breakdowns must be fixed, and their causes eliminated as they occur – so that if production is to be continuous, so too must be improvement. In many regulatory settings the triggering mechanism is a system for registering, analyzing and eliminating the causes of near misses – accidents (in air traffic control or nuclear power generation) that only by chance did not occur, and therefore, properly understood, illuminate some of the otherwise unobservable conditions that can lead to catastrophe. In the provision of public services, such as child welfare, the triggering mechanism can be a searching review of randomly selected cases, with the aim of determining whether the routines for diagnosing and responding to the problems of especially distressed families were followed to good effect, and if not whether the cause of the problem was a local defect in decision making or a defect in the routines or goals of the agency. In all these cases rule following comes to include the obligation to consider whether the current rule should be revised, and if so how. To act accountably under these novel institutional conditions means either to act in conformity to a rule, or to provide a compelling account (as gauged by the experience of peers in similar situations) of why it is reasonable to deviate from the prescribed practice locally and perhaps more generally. Accountability is forward as well as backward looking.

This note extends the discussion of pragmatist institutions to the organization of some key aspects of democracy. A central theme is that, as with pragmatist institutions generally, innovations that work under current conditions enlarge possibilities for participation and experimentation, and so are compatible

with and may well advance the chances of realizing some variant of Dewey's democratic ideal. Many, perhaps most of these innovations are permissible under current understandings of the laws of constitutional democracies and the administrative state. In many cases, they develop without disturbing the usual business of state, and, at least partly for that reason, remain largely invisible to the larger public. But the assumption – and incipiently the experience – is that as more existing and new political actors are drawn to take advantage of the opportunities afforded by experimentalist innovations debate will spring up about their legitimacy and permissible scope, creating the potential – but only that – for a public re-elaboration of democratic ideals and the creation of more inclusive forms of participation.

Dewey's own approach to the problem of organizing reform of democracy was, on the contrary, initially focused on rethinking the ideal of democratic participation, or, backing up a further step, the conditions of communication eventually shaping it. He was long inclined to leave the design of institutions to the outcome of this process. To the extent that he had concrete institutional plans they vacillated in focus between the society as a whole and the immediate local community. Democratic experimentalism looks to connect these levels to correct the defects of an exclusive focus on either. Dewey's ideas will serve as a foil for those presented here, and it is to these that we turn next.

## 2. Dewey's Two Ideas of Democracy

Dewey had two ideas of how democracy might come into its own under the conditions of his day. The first, set out in *The Public and Its Problems*, was very spare indeed, and linked the emergence of democracy to the emergence of any effective distinction between public and private action. Private transactions, paradigmatically in the form of bi-lateral contracts, often had consequences for others not party to the agreement: externalities, as we would say. When those subject to the externalities become aware that they were jointly constrained by decisions over which they as yet had no control, they form a public, and in coming into being that public authorizes an official of the state to regulate the transactions that affect it. Democracy is the form of government that most encourages and best responds to the formation of publics, and in so doing allows the society of transactors, naturally interdependent and gregarious, to reflect deliberately on its spontaneous exchanges and, channeling these in the interest of all, to become a self-aware community. The problems of the public in the 1920s, had to do, as noted above, with the rise of the large firms and organizations, and their disruptive effect on the local communities and forms of communication that had allowed American democracy, in Dewey's view, to function naively, without the need for substantial self-reflection and revision, since the founding. The remedy was the spread of the culture of inquiry from the laboratory to the larger society, abetted by and encouraging the creation of new forms of communication, less tainted by commercialism and sensationalism than

the alliance of mass media and advertisement dominating the 1920s, and new forms of art as the incorruptible means of conveying experience. If successful, this remedy would transform the national, highly interconnected but un-self-reflective great society of the 1920s into a new, morally self-aware, “great” community, of necessity democratic because democracy “is the idea of community life itself.”<sup>4</sup>

But when it came to proposing reforms Dewey demurred. It was pointless to “set forth counsels as to advisable improvements in the political forms of democracy” until the problem of communication and improved collective self understanding had been solved – and then it would be superfluous:

The prime difficulty...is that of discovering the means by which a scattered, mobile and manifold public may so recognize itself as to define and express its interests. This discovery is necessarily precedent to any fundamental change in the [political] machinery.<sup>5</sup>

Making reform the outcome of an (almost self-effectuating) process of mutual self-discovery resonates with the evolutionary or “naturalistic” strand of Dewey’s thought: the exaltation of the idea of the mutual determination of ends of and means whereby the criteria of selection – here an idea of democracy – and the units selected – here the institutions of democracy corresponding to that idea, and the role of citizens in them – co-evolve, so that the public and reforms it demands can only emerge together. Indeed Dewey described universal suffrage, majority rule and the other characteristic institutions of representative democracy as having “evolved in the direction in which the current was moving, each wave of which involved at the time of its impulsion a minimum of departure from antecedent custom and law. The devices served a purpose; but the purpose was rather that of meeting existing needs which had become too intense to be ignored, than that of forwarding the democratic idea.”<sup>6</sup>

But to the extent that democracy, or any other form of social organization, is the product of an evolutionary cunning of reason, the possibility of human agency is of course undercut and the idea of a mutually enriching exchange between individual and society gives way to the blind jostling and adjustment of organism and environment. With regard to the development of democracy such evolutionary claims, quite apart from their paradoxical perversity, are bad history, of a sort that Dewey himself in other settings derided. The debates about the founding of the French and American republics, or about the extension of the suffrage in Great Britain and other Western European countries in the 19th century, all focused on institutional arrangements as the means of linking certain ideals of democracy and certain attributes of the people to produce in time a virtuous circle, with the institutions encouraging development of the people’s virtues, limiting the play of their vices, and becoming themselves stronger in turn. These debates did not take place on a tabula rasa; the grand designs they produced were realized very imperfectly because of faults in their

assumptions and ambiguities in their goals. But they were profoundly consequential in shaping developments and especially the setting within which the people would thenceforth debate their constitution. They are an analogue in public life to those moments Dewey incessantly invokes in which individuals, struggling to conjecture novel and purposeful meaning, both make use of habit and transform it even as they add definition to their individual characters. Given the entirety of his work Dewey could well have invoked this analogy, and investigated the situation of democracy in the 1920s from the vantage points it suggests. He didn't. But the fact that he could have allows or invites us to consider the limits of *The Public and Its Problems* more as the circumstantial evasion of some intellectual challenges rather than the expression of a fundamental flaw in Dewey's idea of democracy.<sup>7</sup>

Dewey came back in his writings to the theme of democratic reform a decade later with a related but distinct approach that was more fragmentary but more vivid. The local community, the victim of industrialization in *The Public and Its Problems*, was now to be the saving remnant or regenerative kernel. Dewey embraced Jefferson's long-standing concern for a roughly egalitarian distribution of property as the material basis of a republic, and his late idea of subdividing Virginia's counties into small ward republics: deliberative assemblies with certain administrative powers on the model of the New England town meeting, with its reliance on the direct participation of citizens and rejection of representation.<sup>8</sup>

To understand Dewey's affinity for this kind of communitarian localism – “the local is the ultimate universal, as near an absolute as exists,” he wrote in *The Public and Its Problems*<sup>9</sup> – it is helpful to see it in relation to the continuing influence on his thought and political formation of the republican populism and the associated movement for producer cooperatives of his youth, and especially his admiration for Henry George, one of the most radical defenders of the small holders and their local communities. George's main reform proposal was a tax on the increase in land rents. What apparently drew Dewey to the idea was George's account of the profoundly social origins of the increase in land value. George saw this increase as a process by which individually rational, even calculating decisions led to an ever more complex division of labor, and with it closer cooperation and the emergence of community. In George's parable the arbitrary choice of the first plains settler for this acre rather than the adjacent one drew a second and a third pioneer in search of companionship and neighborly help; this growing agglomeration drew artisans and traders; this center of commerce and trade finally becomes a city and seat of learning; ideas accumulate and clash. Here, in the pages of George's *Progress and Poverty*, Dewey perhaps found an illustration more vital than anything else in his ken of the conjoint growth of commerce and community, embedding politics in the culture of cooperation and making it therefore democratic.<sup>10</sup> This attraction to the local, and the desire to re-found democracy on it, was of a piece with Dewey's bed-rock conviction that the abstract and the concrete, means and end, must be

joined to be put to useful purpose. Local action, growing out of immediate experience and generating immediate local effects and corrective responses, seemed a necessary condition to sustain this connection.

Had Dewey been able to look ahead in time he would no doubt have been surprised by the bright – but not unclouded – future of the ward republics that flickered into his imagination through the fusion of Jefferson’s ideas and George’s. In the 1970s and 80s, mutually reinforcing changes in technology and markets began to undermine the stability required for the long-term investments that were the foundation of the mass-production firms asserting their dominance of the national and world economies in Dewey’s day. One of the forms of economic organization, along with the Toyota production system, that was robustly adaptive enough to thrive amidst the ensuring volatility was the cluster or industrial district: geographically compact agglomerations of small and medium sized firms, competing and cooperating with one another. Each firm in an industrial district specializes in a particular phase of production or in a production process, and groups of firms collaborate in rapidly shifting constellations to produce finished goods. Dealings in these industrial districts are face to face; personal and professional reputations shade each other. Because firms are generally small, and the transition from craft worker to small entrepreneur to industrialist (and back) is fluid and open, the distribution of property and opportunity is roughly egalitarian. Because firms are too small to provide many services such as vocational training or sophisticated quality control they need by themselves, they must cooperate to organize joint provision. The economic shades into the political. The actors in industrial districts often understand their own history in ways that recall George’s parable of the passage from neighborly contiguity to economically dynamic community. In the 1980s and 90s, there was an explosion of writing tracing the history of these districts, their eclipse by mass production firms in Dewey’s day, their later resurgence and diffusion to new areas – and explicitly celebrating industrial districts as a vindication of the feasibility under modern conditions of the ideal of the yeoman republic.<sup>11</sup>

But if the success of the industrial districts lends substance and plausibility to Dewey’s later democratic intuitions, their current vicissitudes call attention to a salient limit in his conceptions and the broader tradition of thought from which it springs. The same inwardness that facilitates informal, personal dealings and the accumulation of tacit knowledge within industrial districts – everyone knows, judges the capability and reliability, and learns from everyone else in the community – makes it harder to collaborate closely with and learn from outsiders. The districts are highly flexible within their traditional domains (ceramic tiles, packaging machines, hydraulic systems and so on); but as some multinational firms turned themselves in effect into federations of clusters, passing knowledge across domains to create innovative products and processes, and leading firms within districts “broke” with local solidarity to do the same, industrial districts as an organizational form have come under strain. “Locality” is still a necessary condition for responsiveness; but it is not sufficient – the

ability to learn across localities is necessary too. To the extent that “natural” community of the republican tradition and Dewey’s Jeffersonian moment encourages the first at the price of discouraging the second it seems more a limit than a foundation. The fundamental problem today seems not how to preserve or foster creation of natural communities, but how to encourage sufficient explication of tacit knowledge to make exchange and learning among “strangers” possible without undermining the conditions that foster informal dealings and reciprocity.<sup>12</sup>

Dewey, to be sure, could not look ahead to see things from this vantage point. But it was obvious in Dewey’s day, and no doubt to Dewey, that no alternative to the economic and political centralization that he saw as ruinous for community and democracy would be credible unless it indicated how diverse publics or local communities could be federated to coordinate their regular interactions, resolve and learn from their differences and act in concert when necessary. Awareness of the problem flits across a very few of his pages;<sup>13</sup> but there is no substantial treatment of it, not even in the discussion of the county ward republics, which could well be the base of a renascent democracy but never the entirety of one.

Besides drawing attention to the importance today of federated learning across community boundaries the recent realization in the industrial districts of the limits of tacit knowledge and the kinds of craft and professional experience from which it grows marks a profound change in the context of problem solving, private and public, from Dewey’s day to ours. The problem for the New Deal, well captured in *The Public and Its Problems*, was how to regulate the consequences of an increasingly interdependent and national economy. The solution typically was creation of an expert administrative agency that consulted in turn with a trade association representing the primary actors in a given domain: Congress, recognizing the limits of knowledge of a particular area delegated the relevant rule-making authority to the agency; the agency, better informed than Congress, realized the limits of its competence and conferred in the actual drawing of rules with the representatives of those with immediate – local – experience of the matter at hand. The presumption all along was that authorized decision makers were in varying degrees unaware of crucial aspects of context, but that there were some – primary – actors who did know what they were doing, and could be drawn into a discussion of how to regulate it in the public interest. The problem, in other words, was official ignorance; the remedy was an institutional arrangement allowing the legislature and its delegates to poll the informed parties. This solution may well have seemed too centralizing to Dewey – more likely to entangle local actors in national projects than to reshape national policies from below – or too dependent on an upward cascade of representation rather than anything resembling direct democracy; but it was, within the broad meaning of his austere discussion of the menace of externalities, a legitimate (and for many decades passably workable) solution to the public’s problems.<sup>14</sup>

Today the problem has shifted from ignorance to uncertainty. The impediment to decision making is not the inability of the official outsiders to know what the insider actors are about. Rather it is the inability of all – insiders and outsiders alike – to confidently identify the risks and opportunities they are likely to face. Practically speaking the increase in volatility of technologies and markets means that yesterday's solutions are a poor guide to tomorrow's problems and the best response to current problems may arise in a domain until now considered irrelevant. Problem solving therefore goes hand in hand with the search for new potential collaborators: the opening of lead firms in industrial districts to new and unfamiliar partners is a case in point. The public response to pervasive uncertainty therefore is not more extensive polling of insiders but the organization of joint inquiry into potential risks and how to mitigate them. Recall that this is precisely what pragmatist institutions in the public and private sectors do: on the assumption that no actor has a sufficiently panoramic view of a problem area to predict where breakdown will occur, or where opportunities for improvement exist, these institutions use naturally occurring or deliberately induced disruptions in operations to trigger searches for both.

A further effect of the rise in uncertainty has been to undermine the transfer based welfare state emerging in the US in Dewey's day. In a relatively stable world it is possible to foresee periodic disruptions, such as seasonal or cyclical downturns in labor markets, and insure against them. But uncertainty gives rise to non-actuarial risk: harms whose incidence is so unpredictable that it is impossible for those at risk to create an insurance pool sufficient to indemnify those who incur losses. The increase in structural unemployment illustrates the problem. When radical shifts in product design or production technology permanently devalue whole trades and skill categories (a shift to computer-controlled manufacturing that displaces assembly-line workers and machinists), unemployment insurance, by itself, is not a bridge to another job in the same line of work, or indeed to any job at all. The effective response to these conditions is to help individuals and families to self-insure against risks by enabling them to acquire the capacities they need to surmount the disruptions they face: the general skills that ensure employability in a wide and changing range of jobs. Social solidarity depends less centrally on the provision of various forms of social insurance, and more on the provision of capacitating or enabling services that foster the acquisition of the skills that underpin self-reliance.<sup>15</sup>

In prospect, at least a persistent increase in uncertainty favors the emergence of a world congenial to Dewey – a world in which mutual learning and joint problem solving give rise to a democratic community. For one thing, Dewey's emphasis on schooling as an opportunity in each generation to break the grip of social habit and enable each individual to acquire the skills she needs to participate fully in democracy and productive activity looks like a prescient anticipation of the emergent capacitating or service-based welfare state (though it must be said that Dewey, inattentive also in this domain to questions of institutional design, ignored the problem of helping students reform the diverse

and sometimes obstructive habits they brought to the classroom, and so had little to say on the fundamental question of the role of the teacher and curriculum in supporting those who did not learn “naturally.”<sup>16</sup> More generally, uncertainty encourages the kind of inquiry that Dewey saw as the highest expression of our creativity and sociability. The more uncertain the world – the harder it is to know what it can become – the riskier and potentially more costly it is to rely on familiar strategies (and associated conceptions of self-interest) resting on complex assumptions about the way the world must be; the more prudent it becomes to the contrary to entertain the possibility of elaborating next steps with others similarly at sea, on condition that they share what they learn and bear a share of the costs of exploration. As the first, provisional steps suggest others, ideas of what is possible individually and jointly begin to change; changing ideas of possibilities prompt reconsideration of common interests and how to pursue them, and with whom. Increased uncertainty does not erase all old enmities and correct every imbalance in the distribution of power. But it does increase the disposition of actors to look beyond the familiar circle of friends and allies for new partners and new forms of collaboration.

At the level of polities as a whole, a long-term effect of the shift from Dewey’s day to ours in the focal problem of governance from official ignorance to organizing joint inquiry in response to uncertainty is a change in the form of lawmaking and its implementation that fosters the establishment of pragmatist institutions in regulation and the provision of public services. This change gives an increasingly experimentalist cast to the traditional administrative state; it may create a passage from representative democracy to an experimentalist one closer to Dewey’s ideals and – because it makes general commitments the basis for local learning and local learning the basis for re-evaluation of the commitments – better fitted to the conditions of our times than either the encompassing great community or the isolated ward republics he imagined.

### 3. Experimentalist Lawmaking and Administration

The shift towards experimentalist lawmaking requires complementary changes in the way laws are constructed and the way they are administered or applied to various contexts: the law has to encourage adaption and revision when applied in context; the contextual adaption has to make possible the detection of local error, permit learning across contexts, and prompt reconsideration of the original legislation when, on reflection, necessary.

Meeting both sets of requirements together yields a characteristic sequence of experimentalist lawmaking and administration. It begins with agreement at the highest-level jurisdiction (for example, the federal level in the US, the Union level in the European Union) on broad framework goals. Lower level actors (the states in the US, the member states in the EU, or administrative agencies acting through their local units or in collaboration with state or member state administrations) are given discretion to advance the general goals in their

own way, but on condition that they elaborate either by themselves, and more typically with others, standards that specify the goals and set metrics for gauging progress towards them. Lower level experience is then periodically compared against the backdrop of these standards and metrics, and these comparisons of implementation experience call attention to the need for either changes in particular lower-level administrations or revisions of the standards and metrics, or the framework law or some combination of all of them.

Following this sequence the highest-level jurisdiction or center need not pretend to a panoramic view of the situation that it cannot have, and lower-level actors need not rely exclusively on their immediate but necessarily limited experience. The limitations of each vantage point is corrected by the view from the other, breaking down the familiar distinction between the principal who conceives plans and the agent who executes them, and the equally familiar idea of law as “made” by a sovereign legislature and executed by administrative bureaucracies bound to be as faithful as possible to legislative intent. Here too accountability is forward as well as backward looking.

With this enlargement in the scope of accountability comes an enlargement in the possibilities of active participation in law making and an increase in its transparency. What is expected of the lower-level officials, at all levels, and of private actors to whom regulation is addressed is not conformity to a rule, but active investigation of superior solutions, and criticism of the rule when the results of that investigation call for it. Changes in service provision work in the same direction. The active search for alternatives, and reports on their utility, make it possible for the public, legislators and courts to know not just what an instance of the administration has decided, but whether its decision is as fully informed and deliberative as the experience of peer entities, facing similar problems, suggests it could be. Or put another way, the obligation to formulate standards, report experience under them and review their utility means that when government makes itself transparent, what becomes visible is likely to be usefully informative.

Despite the manifest differences between the US and the EU – the first is the prototype of the modern federal state, with a demos that proclaimed itself a polity by adopting a constitution; the EU is, formally, a peculiar entity, with neither a demos nor a true constitution, and combining features of a confederation of democracies and an intergovernmental organization acting across and from beyond national borders on the basis of treaties – both are enacting laws and creating administrative arrangements with markedly experimentalist features. Developments are perhaps more pronounced in the EU, in part because construction of the regulatory regime began much later than in the US, and hence the need to address uncertainty was more salient, and in part because the “polyarchic” nature of the EU – the absence of a single sovereign – often makes it opportune in lawmaking to specify common, core requirements, but to give express autonomy to member states to achieve these goals by the means most compatible with their respective legal and institutional traditions.<sup>17</sup>

An example of developments in the EU is the recent regulation on the Registration, Evaluation, Authorization and Restriction of Chemical Substances (REACH).<sup>18</sup> The regulation establishes a framework for ensuring that all chemicals in commerce or incorporated into products in the EU are used in ways consistent with high levels of protection for human health and the environment, or banned from use; it creates the European Chemicals Agency (ECHA) to administer application of its provisions. The comprehensive scope of REACH addresses a prior regulatory failure. Existing requirements for the commercialization of new chemicals dulled incentives for innovation by often making it cheaper for firms to rely on already approved products, rather than bear the costs of registering new ones. REACH removes this disincentive by requiring that all chemicals produced or imported into the EU in amounts of one ton or more be registered with the ECHA, old (during a transition period) or new (as they come to market). Carcinogens, persistently toxic, bio-accumulative chemicals and other “substances of very high concern,” which can have irreversible effects on human health or the environment, are subject to additional scrutiny and only authorized for specific uses if it can be demonstrated that their benefits outweigh their risks. The use of chemicals that cannot meet this test is restricted. The burden to produce information required for registration or authorization is clearly on the applicant firm – “no information, no market” is the lapidary gist of the regulation – and firms seeking approval of the same or related chemicals are strongly encouraged to form consortia to promote mutual monitoring and to reduce the need for testing of chemicals on animals. The Risk Assessment and Socio-Economic Analysis Committees of the ECHA evaluate applications for authorization; the Commission of the EU (the Union’s executive body) must accept these recommendations or offer a reasoned justification when departing from them. The member states are represented on the ECHA management board and its committees. More fundamentally, in recognition of the background uncertainties in all ECHA decisions, member states are given extensive rights to challenge Agency judgments if their competent authority – typically a national environmental ministry or agency – finds evidence for doing so. The upshot is that “central” decision-making is provisional, and subject to correction on the basis of local experience. A recent review of the regulation’s operation finds:

At every turn, whether it is in relation to which substances are to be evaluated [subject to heightened scrutiny as a condition of registration – cfs], which are to require authorization or restriction, or in relation to labeling requirement, Member States ... are empowered, on the basis of clearly defined procedures, to seek to use their local knowledge to persuade the European Union as a whole of the need to revise applicable norms, in order to ensure effective fulfillment of the Regulation’s framework goals.<sup>19</sup>

Similar experimentalist arrangements are found in other areas of environmental protection (water quality, for instance), as well as regulation of telecommuni-

cations, energy, drug authorization, occupational health and safety, food, maritime, and rail safety, data privacy, employment promotion, social inclusion, and pension reform, and more recently in health care, anti-discrimination policy, and competition policy.<sup>20</sup> The emergent administrative law of the EU encourages extensive deliberation in connection with the fluid implementation processes on which these institutions depend by obligating Union institutions either to abide by the recommendations of the scientific committees they consult or provide reasons of commensurate sophistication to those they set aside.<sup>21</sup>

The conditions for this kind of administrative fluidity, and the forward-looking forms of accountability on which it depends, seem at first glance much less propitious in the US. Our constitutional tradition, influenced by Locke, is deeply suspicious of any delegation of legislative authority, including to administrative bodies; our administrative law tradition, in part for this reason, exults in imposing backward looking accountability, and more generally defers to the judgment of agencies when they are seen as resolving ambiguities or filling gaps in legislative mandates but does not hesitate to set aside agency decisions when these are judged to be in violation of clear legislative intent. But as often the formal obstacles overstate the barriers to innovation. Congress can and does enact legislation creating experimentalist regimes with many of the features of REACH and other such measures in the EU. Perhaps more important, the increasingly extensive cooperation between the states and the federal government in the implementation of laws may be encouraging the diffusion of experimentalism even where Congress does not expressly intend this.

An example of the creation of an experimental regime by express Congressional action is the Food Safety Modernization Act of 2011 (FSMA).<sup>22</sup> The FSMA requires food processing facilities to be licensed by the Food and Drug Administration (FDA). To secure a license, facilities must submit a Hazard Analysis and Risk-Based Prevention Control plan adequately identifying the critical points in the production process where pathogens might contaminate food stuffs, specifying measures to mitigate the risks and the tests to verify the effectiveness of the measures, and providing test results demonstrating that the risks are indeed under control.<sup>23</sup> Under FSMA, the “owner, operators, or manager shall monitor the effectiveness of [plan] controls,” and the FDA periodically inspects licensed facilities, with the frequency of inspection increasing as the facility’s performance, compared to its peers, decreases. Where facility monitoring detects failures in risk management, FSMA requires corrective action to eliminate the cause. The facility must “reanalyze” its plan every three years – sooner if changes could create a “new hazard or a significant risk in a previously identified hazard” –to verify it is “still relevant to the raw materials, conditions, and processes in the facility, and new and emerging threats.”<sup>24</sup> In addition, FSMA mandates that the FDA, in collaboration with other agencies, develop domestic and international systems that can trace outbreaks of food-borne illness back to their source in the food supply chain. As with REACH current judgment is subject to continuous challenge and revision under the

impetus of new experience captured and rendered accessible to reflection through the interplay of information from local to higher levels and back.

A second, indirect, but perhaps ultimately more consequential route for the diffusion of experimentalism in the US is through the common Congressional decision to delegate authority to implement laws that it enacts to state administrations: cooperative federalism. Cooperative federalism is not new. The New Deal Social Security Acts are administered jointly with the states; so too are many of federal welfare programs and the Medicaid statute of 1965 (providing health insurance to low-income populations) that emerged in part from them. The Clean Air and Water Acts of the 1970s and the Telecommunications Act of 1996 depend importantly on federal-state cooperation in various ways as well.<sup>25</sup>

As Dewey would have expected, experience shows that in many of these cases the implementation of the law reshapes its original conception: talk of rights by state and federal officials helped establish the expectations that gave rise to demands for welfare rights in the 1960s; use of state waivers from federal welfare programs allowed for state-led experiments that led to the 1996 federal welfare reform. Through their own administrative actions and waivers from the federal program, states extended coverage of their Medicaid programs, transforming them from aid to some of the “deserving poor” to an entitlement for all citizens below a certain income level.

But two recent and significant pieces of legislation go further in making the joint exploration of possibilities an aim rather than an incidental outcome of Congressional intent. The first is reauthorization of the Elementary and Secondary Education Act of 2010, better known as the No Child Left Behind Act (NCLB). As a condition for receiving federal subsidies it obligates states to set their own standards for an “adequate education,” and to create governance mechanisms, including a regime for testing proficiency in literacy and numeracy, that ensure that all students, including various racial minorities and other groups, make annual progress in reducing the gap between their educational performance and the state’s goals.<sup>26</sup>

The second is the Patient Protection and Affordable Care Act of 2010 (ACA) – the most significant national social rights legislation since the 1960s. The ACA and the regime it creates are in many ways the product of direct and explicit federal-state collaboration. Thus Congress mandated the Secretary of Health and Human Services (HHS) to draft certain regulations “in consultation with” the National Association of Insurance Commissioners (NAIC), the association of state insurance officials. The NAIC has also developed many model statutes and regulations for state use in implementing the ACA; it has directly drafted federal regulations for HHS itself. The ACA is also replete with invitations to the states (and private parties) to undertake pilot programs in various areas.

More fundamentally, the design of the health insurance exchanges facilitating purchase by individuals and small business of policies that meet federal standards – a centerpiece of the reform architecture – is to be left largely

to the states. The phrase “state flexibility” occurs six times in the statute in connection with provisions regarding the exchanges. Under regulations proposed by HHS, moreover, states may, unusually, request the federal government to provide administrative support in the operation of the exchanges. But if certain states choose not to establish exchanges, as they may do under the ACA, then the federal government will provide them in their stead.<sup>27</sup> Thus where previous use of cooperative federalism allowed states to make themselves, in Brandeis’ phrase, laboratories of invention, its elaboration in recent statutes aims to induce and support experimentation.

But this further step falls short of creating an experimentalist regime. What is missing is the continuous pooling, at the national level, of local experience and ongoing revision of norms at various levels in the light of it. The absence of such mechanisms is especially clear in experience under NCLB. Defects in, among other things, the requirements for measuring progress towards (state defined) adequacy, and plausible remedies for them, became manifest in the early implementation of the law. But there was no ready means of correcting them. Congressional deadlock has prevented amendment of the law in the course of reauthorization, and the Department of Education is now in effect revising the legislation in collaboration with the states by granting waivers to various provisions of the existing statute on condition that applicant states demonstrate how they intend to meet various new governance requirements.<sup>28</sup>

Yet even if the most recent extensions of cooperative federalism do not directly establish experimentalist institutions, they may still facilitate their formation and diffusion. For in areas such as child welfare, education, or juvenile justice (for instance, to create alternatives to detention for minority youth disproportionately subject to it) many reform efforts at the municipal and state level, often drawing on national professional communities well aware of the advantages of adaptive institutions, establish pragmatist institutions. New York City and Baltimore are two of many examples. The former mayor of Baltimore, Martin O’Malley, is currently the governor of Maryland and is fostering the elaboration of experimentalist institutions within and among the state’s agencies.<sup>29</sup> The intersection of the top-down movement towards cooperative federalism and the bottom-up construction of pragmatist institutions seems likely to create many settings for the emergence of experimentalist regimes connecting the national, state and local levels.

More could be said about the possible routes to the spread of experimentalism in the US, especially the role of the courts in creating spaces for innovation in the organization of public administration.<sup>30</sup> But the discussion so far may suffice to establish that there is substantial change in this direction – innovations in the making and administration of law that show that it is feasible to link local and higher learning in public problem solving; that there is no salient barrier to more innovation of this kind, and some reason to think that the drift of developments is in that direction.

#### 4. Is There a Politics to Democratic Experimentalism?

The very compatibility of all these changes with our current, manifestly impoverished representative democracy must raise the question whether in the end the drift or shift towards experimentalism might at best yield an improvement in the performance of public institutions yet leave the current, stunted forms of participation in politics, and the erratic relation between popular politics and institutional reform largely unchanged. Have we come this far only to discover a limit that mirrors Dewey's? Starting with the need for the reformation of the public, and for new forms of communication that would make this reformation possible, he never managed to foreshadow an institutional design for a renascent democracy that might have channeled communication towards the formation of a new public and engaged the public in the search for means to articulate its program and identity. Democratic experimentalism starts with such institutional designs but stops short of saying much of those institutions are related to a new democratic public and the forms of communication by which it is constituted. Is the route different but the end point equally far from the common goal?

A partial response is to note that an improvement in the performance of government of the kind experimentalism delivers, and of which it promises more, is no small thing. Our ideas of what government can do are powerfully shaped by what it actually does, our ideas of what participation is possible by the opportunities to participate actually afforded. In this sense (some) schools and other services that work, (some) regulatory regimes that keep us safe while commerce flows create their own constituencies – not the publics affected by externalities that Dewey had in mind, but large groups of beneficiaries, with membership ramifying into the broader society, and convictions about how government can perform, and how to influence that performance that can influence the general understanding of politics. It would not be the first time. The creation of the agricultural extension service of the US Department of Agriculture and other such institutions during the Progressive Era had this effect.<sup>31</sup>

More generally, the success of institutions in providing child-care, health, vocational training and other services of generally high quality clearly contribute to the willingness of citizens in the Nordic welfare states to bear the high tax burden associated with them.<sup>32</sup> Nor need we fear that mobilization in favor of promising possibilities will always be thwarted by the “logic of collective action,” according to which a few, powerful actors, standing to benefit greatly from certain policies, and therefore having incentives to invest in campaigns for achieving them, will always prevail over many, scattered beneficiaries of alternatives, each with too small a share of the respective total returns to have an incentive to organize on their behalf.<sup>33</sup> Recent research demonstrates that when “diffuse” actors come to see visceral interests at stake – as in the case of consumers who came to fear themselves and their families in jeopardy from defective products or environmental degradation in the 1960s or parents today

who fear their children's future at risk because of deficient schools<sup>34</sup> – mobilization is rapid and effective.

Similarly with accountability: the continuing review of routines in pragmatist institutions, involving the individuals and firms that engage with them, amount to continuous training in new forms of forward-looking accountability. It creates habits, and those habits form constituents' expectations of legislative oversight bodies, and of the capabilities required for elected office. Expectations of what kinds of information are relevant to judgment shape the value placed on forms of communications; such evaluations in turn shape the flows of information that inform the public in Dewey's sense and more generally.

But this response is limited. Pressed too far it converges with the fallacious, "naturalistic" strain of Dewey's thought. The idea that uncertainty gives rise to pragmatist institutions and experimentalist forms of lawmaking and administration, and that these induce new forms of participation and accountability may be closer to the circumstances of our day than Dewey's argument linking externalities, forms of communication and the rise of new public was to those of his. But it is all too easy to envisage other outcomes of our uncertain times that would further degrade, not improve the democracy we have; and even if the weight of circumstance favoring an experimentalist outcome were greater, to rely on those circumstances as guaranteeing the outcome would be to negate the ideal of democracy as self-determination, individual and social, even in pronouncing its triumph.

Yet perhaps, even mindful of this limit, we have not been turning in circles. The emergence of pragmatist institutions and democratic experimentalist form of law making and administration attest the widely diffused, incremental capacity to innovate in response to failed routines that Dewey saw as the defining feature of human nature and the foundation of faith in democracy. These innovations are not self-sustaining; they do not by themselves engender a democratic politics. But perhaps they orient our thinking and imagination, inviting conjecture both by their successes and their limits about further projects that call forth debate and conflict. Perhaps they establish enough of a connection to the currents of reality of our day to fulfill what Dewey saw a necessary condition for putting practical imagination in the service of our ideals. "Ideals," he wrote, "express possibilities; but they are genuine ideals only in so far as they are possibilities of what is now moving. Imagination can set them free from their encumbrances and project them as a guide in attention to what now exists. But, save as they are related to actualities, they are pictures in a dream."<sup>35</sup> Democratic experimentalism claims no more and no less than to be in this sense a genuine ideal of democracy.

## NOTES

1. Robert B. Westbrook summarizes Dewey's late ideal of democracy this way: "At best, then, we can say that Dewey hinted in 1939 at some creative democratic thinking grounded in the prospect of a revitalized, reconstructed Jeffersonian democracy." Westbrook, "Creative Democracy – The Task Before Us," presented at the 'Creativity: Raw and Cooked' conference, Humanities Center of Lehigh University, 22 March 2005.

2. Most conspicuously and consequentially in the election of 1912, pitting William Howard Taft, a constitutional conservative, against Theodore Roosevelt, whom we would today consider to be an advocate of popular constitutionalism, and Woodrow Wilson, a proponent of the idea of the president as the bearer of a national mandate and the head of a cabinet government. See William E. Forbath, "Popular Constitutionalism in the Twentieth Century: Reflections on the Dark Side, the Progressive Constitutional Imagination, and the Enduring Role of Judicial Finality in Popular Understandings of Popular Self-Rule," *Chicago-Kent Law Review* 81 (2006), pp. 967–990.

3. Charles F. Sabel and William H. Simon, "Minimalism and Experimentalism in the Administrative State," *Georgetown Law Journal* 100 (2011), pp. 54–93.

4. John Dewey, *The Public and Its Problems* (Athens: Ohio University Press, 1954), p. 148.

5. Dewey, *Public and Its Problems*, p. 140.

6. Dewey, *Public and Its Problems*, p. 145.

7. My good friend Roberto Unger is less forgiving. He observes that American pragmatism and Dewey with it vacillate between two incompatible ideas. The first is captured in "the picture of the human agent thrown into a constrained but nevertheless open world – a world in which everything can become something else and nothing is permanent." This is Dewey who said "ability to frame hypotheses is the means by which man is liberated from submergence in the existences that surround him and that play upon him physically and sensibly. It is the positive phase of abstraction." John Dewey, *The Quest For Certainty* (New York: Minton Balch and Co., 1929), p. 165. The second idea is captured in the tale of the sorcerer's apprentice: the toolmaker, fashioning instruments to cope with his situation, becomes "himself a tool: a tool of natural evolution." Roberto Mangabeira Unger, *The Self Awakened: Pragmatism Unbound* (Cambridge, Mass.: Harvard University Press, 2007), p. 35. The tension is there; it is sometimes vitiating. But any theory of human action that assumes limited foresight, hence unintended consequences, and the possibility of real novelty or innovation of any single and therefore necessary trajectory of development can be understood as having an evolutionary aspect: outcomes, neither fully intentional nor foreordained by higher determinants, are yet shaped by the recursive interplay of intention and constraint. Ansell's discussion of Dewey in relation to Simon's science of design (in this volume) suggests that in some settings (for instance, the development of complex products that change our ideas of what devices can do and what we expect of them) the evolutionary perspective is instructive.

8. For Dewey's petty bourgeois radicalism and populism see Robert Westbrook, "Creative Democracy – The Task Still Before Us," 2005. Also in Sheila Greeve Davaney, and Warren G. Frisina, eds. *The Pragmatic Century: Conversations with Richard J. Bernstein* (Albany: State University of New York Press, 2006), p. 191. See also Westbrook, *John Dewey and American Democracy* (Ithaca, N.Y.: Cornell University Press, 1991), pp. 315, 454–458; and Robert Westbrook, *Democratic Hope: Pragmatism*

and the Politics of Truth (Ithaca, N.Y.: Cornell University Press, 2005), chaps. 3 and 5; Robert Johnston, *The Radical Middle Class: Populist Democracy and the Question of Capitalism in Progressive Era Portland, Oregon* (Princeton, N.J.: Princeton University Press, 2003); and Kevin Mattson, *Creating a Democratic Public: The Struggle for Urban Participatory Democracy During the Progressive Era* (University Park: Pennsylvania State University Press, 1998).

9. Dewey, *Public and Its Problems*, p. 215.

10. "It is a poor version of [Henry George's] ideas which insists only upon the material effect of increase of population in producing the material or monetary increment in the value of land. ... Henry George puts even greater stress upon the fact that community life increases land value because it opens 'a wider, fuller, and more varied life,' so that the desire to share in the higher values which the community brings with it is a decisive factor in raising the rental value of land." Henry George and John Dewey, *Significant Paragraphs from Henry George's Progress and Poverty* (Garden City, N.Y.: Doubleday, Doran and Co., 1928), p. 2.

11. For one example see Michael Piore and Charles Sabel, *The Second Industrial Divide: Possibilities For Prosperity* (New York: Basic Books, 1986).

12. By the way, my own interest in pragmatism and Dewey dates from this period. I was drawn to both by the simultaneous insistence on the inevitability of reliance on tacit knowledge in all action and exchange, and on our ability to explicate much of what we need in what *was* taken for granted when prodded to do so by troubling disappointment of our expectations.

13. Dewey, *Public and Its Problems*, p. 47. See also John Dewey, *Freedom and Culture* (New York: G.P. Putnam's Sons, 1939), p. 160: "On account of the vast extension of the field of association, produced by elimination of distance and lengthening of temporal spans, it is obvious that social agencies, political and non-political, cannot be confined to localities. But the problem of harmonious adjustment between extensive activities, precluding direct contacts, and the intensive activities of community intercourse is a pressing one for democracy."

14. At the point of tangency between Dewey's ideas and the strand of New Deal institution building seeking to reconcile national coordination with recognition of the continuing importance of local particularity stands Karl Llewellyn. Llewellyn was the principal author of the Uniform Commercial Code (U.C.C.), one of the key instruments for harmonizing the diverse state laws concerning sales and other commercial transactions. In Llewellyn's conception the uniform provisions of the code when applied to adjudication of particular cases were to be interpreted in light of the context of the local customs and practices of trade that had shaped the expectations of the parties in the formation of their agreement. Generalist courts were to have access to this local knowledge through incorporation of merchant juries composed of lay traders expert in the ways of their occupation. Llewellyn's emphasis on the need for such contextualization derived partly from his own vast experience of commercial law but also from his familiarity of German Romantic ideas of commercial law (especially the writings of the mid-19th century commercialist Levin Goldschmidt), in which the dealings of the local community are the truest expression of the mores of the people. See James Q. Whitman, "Note, Commercial Law and the American Volk: A Note on Llewellyn's German Sources for the Uniform Commercial Code," *Yale Law Journal* 97 (1987): 156-175. When finally adopted the U.C.C. contained countless directives to courts to determine whether the parties to a case had acted "reasonably" or in accordance with the "usages of trade" or "customs;" but the institution of the merchant jury, which would have facilitated

this determination, was eliminated, and no substitute mechanism provided. Dewey seems to have taken little notice of Llewellyn. But Llewellyn saw important affinities between his work and Dewey's, which he admired greatly. According to Llewellyn's biographer, "Llewellyn's private ambition, as he once confessed in a lecture, was to perform the role of a Dewey in jurisprudence, trying to do for law what the great man had done for other subjects. The most pleasing compliment that could be paid to Llewellyn was to compare him to John Dewey." See William Twining, *Karl Llewellyn and the Realist Movement*, (London: Weidenfeld & Nicolson, 1973), p. 423, n. 130.

15. See Anton Hemerijck, *Changing Welfare States* (Oxford: Oxford University Press, 2013); and Charles Sabel, A. Saxenian, R. Miettinen, P. Kristensen, and J. Hautamäki, "Individualized Service Provision in the New Welfare State: Lessons from Special Education in Finland," report prepared for Sitra, Helsinki (2010).

16. For an incisive appreciation and critique of Dewey's conception of schooling against the backdrop of early 20th century currents of education reform, see Richard Hofstadter *Anti-Intellectualism in American Life* (New York: Alfred Knopf, 1963), pp. 359–388. For discussion of Dewey in relation to current reform movements, see Liebman, James and Charles Sabel, "A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform," *NYU Journal of Law and Social Change* 23 (2003), pp. 183–304.

17. Charles Sabel and Jonathan Zeitlin, "Learning from Difference: The New Architecture of Experimentalist Governance in the EU," in *Experimentalist Governance in the European Union: Towards a New Architecture*, ed. Charles Sabel and Jonathan Zeitlin (Oxford: Oxford University Press, 2010), p. 10.

18. Regulation 1907/2006.

19. Joanne Scott, "REACH: Combining Harmonization and Dynamism in the Regulation of Chemicals," in *Environmental Protection: European Law and Governance*, (Oxford: Oxford University Press, 2009), p. 58.

20. Charles Sabel and Jonathan Zeitlin, ed., *Experimentalist Governance in the European Union: Towards a New Architecture* (Oxford: Oxford University Press, 2010).

21. Case T-13/99, *Pfizer Animal Health SA v. Council of the European Union* [2002] ECR II-03305. For discussion see Marjolein B.A. van Asselt and Ellen Vos, "The Precautionary Principle and the Uncertainty Paradox," *Journal of Risk Research* 9 (2006), pp. 313–336.

22. Public Law 111-353, 124 Stat. 3855. On the origins and general operation of FSMS see Sabel and Simon, "Minimalism and Experimentalism," pp. 54–93. On the detailed provisions of the Act see William H. Simon, "Democracy and Organization: The Further Reformation of American Administrative Law," draft August 2012.

23. FSMA sec. 103(h).

24. FSMA, sec.s 103d, e, i.

25. Discussion of cooperative federalism draws directly on Abbe R. Gluck, "Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond," *Yale Law Journal* 121 (2011), pp. 534–622. An alternative interpretation of cooperative sees the simultaneous delegation by Congress of implementing authority the federal executive and to the states as a device by which the legislature, as the principal, can play its two agents off against each other, and eventually secure execution of its will by endorsing the actions of the agent most faithful to. See Roderick M. Hills, Jr., "Federalism in Constitutional Context," *Harvard Journal of Law and Public Policy* 22 (1998), pp. 181–196, and for a similar argument Jessica Bulman-Pozen, "Federalism as a Safeguard of the Separation of Powers," *Columbia Law Review*

112, no. 3 (2012), pp. 460–503. (Some cases do fit this pattern, but as described immediately below a cooperative federalism frequently produces results that no one, congress included, plainly intended at the outset.)

26. For discussion and further references see James Liebman and Charles Sabel, “A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform,” *NYU Journal of Law and Social Change* 23 (2003), pp. 183–304.

27. See Robert Pear, “U.S. Officials Brace for Huge Task of Operating Health Exchanges,” *New York Times*, 5 August 2012.

28. For a thoughtful review of the waivers see Jeremy Ayers and Isabel Owen, “No Child Left Behind Waivers: Promising Ideas from Second Round Applications,” *Center for American Progress*, 27 July 2012.

29. Observation of StateStat meetings with Joel Rogers in Baltimore and Annapolis, Maryland, during July and August 2012, and discussions with Beth Blauer, Director of StateStat in this period.

30. Charles Sabel and William Simon, “Destabilization Rights: How Public Law Litigation Succeeds,” *Harvard Law Review* 17 (February 2004), pp. 1015–1101.

31. D.P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928* (Princeton, N.J.: Princeton University Press, 2001).

32. Charles Sabel et al., “Individualized Service Provision in the New Welfare State,” 2010.

33. Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, Mass.: Harvard University Press, 1965).

34. For extended discussion, see Gunnar Trumbull, *Strength in Numbers: The Political Power of Weak Interests* (Cambridge, Mass.: Harvard University Press, 2012). On mobilization for school reform see Liebman and Sabel, “A Public Laboratory,” 2003.

35. Dewey, *Individualism Old and New* (1930; Amherst, N.Y.: Prometheus Books, 1999), p. 72.

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