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USA: Economic Revival and the Prospect of Democratic Renewal

The US begins the millennium looking for all the world like a New Rome, only grander and more authoritative than the original: Since the fall of the Berlin Wall, no »limes« marks limits of its power. Nations that once stood hostile across the fortified line now jostle for a place in the American protectorate, mingling their armies with NATO's legions and subjecting their commerce to the lex mercantorum of the World Trade Organization. Along with the boundless might of empire, it seems, goes an imperious adulation of material success, and a corresponding corruption of the Republican virtues that once placed respect for the common good and the fate of fellow citizens before selfish satisfactions.

Historical magnitude aside, the current US triumphs are surprising for two reasons. The first, obvious to all, has to do with their sheer economic improbability; the second, just now being remarked among Americans, concerns the possibility that these successes bear with them the seeds of a democratic renewal. We all know the story of the economic turnaround: A decade and a half ago the US economy, and political influence born of it, seemed fragile and spent. Giant firms that pioneered and perfected the methods of mass production during the last century were prisoners of earlier successes. The techniques that won mastery of steadily growing markets for standardized goods obstructed adjustment to a volatile world economy rewarding speed in design and flexibility in production. For Japan, Western Europe and the developing economies, with less experience of mass production and more of serving niche markets, and condemned to flexibility by the need to rebuild again and again to catch the US, leadership was only a matter of time. The ancient story of the decline of empires from Rome to Great Britain, reveling in the enjoyment of dominions that sap their strength, was inexorably to be re-enacted.

Today, of course, in many industries the former challengers fight to stay competitive, let alone dominant, and in such advanced sectors as microprocessor design, network architectures, software engineering, and biotechnology, US firms dispute questions of leadership largely among themselves. For the economy as a whole these successes and more like them have brought sustained growth, near full employment, the lowest welfare rolls in three decades, and nearly 20 million new jobs in the last TK years alone. The striking increases in disparities in wealth and income accompanying all this seem broadly tolerable so long as they continue to promise something for everyone now and more eventually for all.

The common explanation, given the patina of dogma by ceaseless repetition, attributes the resurgence of the US economy to the revival of individualism under the aegis of President Reagan's neo-liberal revolution. Freed of the ties of fellowship, and in particular the bonds of trade unions and the welfare state, entrepreneurial spirits remake the economy, scarcely aware they are overturning entrenched institutions as they seize new opportunities. Such is the hold of this interpretation that European Social Democrats often despair that US success issues from and advances a worldwide integration of markets and their insurgence against politics – globalization. Caught in the maelstrom of inevitability, the European Union will have to sacrifice its ideals of social solidarity to preserve its standard of living. As this analysis suggests that there are hard choices to be made, but nothing of principle to discuss, it is perhaps not surprising that exchanges among European Social Democrats and their interlocutors on this side of the Atlantic nowadays often stop at mutual consolation.

The reality of the US revival is more complex. In adapting and innovating upon Japanese lean-production methods (originally conceived them-

selves as an improvement of US mass-production techniques) US managers and workers are creating new forms of cooperation as well as competition. Work teams – often with broad discretion over how to do their jobs and sometimes with the power to set goals as well – flourish within firms; project teams and joint ventures link companies more intimately than before. It remains to be seen how and in what measure this new cooperation results in security for individuals, families, and communities. That it will produce none is hardly likely, except on the off chance that the only workable forms of workplace-related solidarity are the ones we know from the heyday of the welfare state.

The Prospect of Democratic Renewal

But the complex interplay of cooperation and competition in the US economy and the emergent solidarities within and among firms that it may produce are a story for another day. Here the focus will be on the second surprising aspect of the US revival: the possibility that a decade from now the most noteworthy feature of this epoch will not be the improbability of the economic turnaround on which it was based, but the breath and depth of the renewal of democracy which it made possible. The mere prospect carries us beyond the shadow of Rome. Imperial Rome, like many empires, survived long enough for several revivals. But none restored and renewed its original democracy. (To gauge how unrecognizably Roman history would have been transformed by such a renewal, try to imagine what would have happened if the Gracchi had restored to the citizens the public lands expropriated by the aristocracy, instead of being clubbed to death for urging redistribution.) By this or any other standard, renewal of democracy in the US would be one for the history books.

Democratic renewal? How can anyone make such a claim when, for starters, US party politics is as paralyzed and corrupt as advertised? In electing a Republican majority to Congress, the voters rejected the Clinton Administration's vision of a second New Deal extending the welfare state (initially by a vast reform of health insurance.) In re-electing Clinton as President, the voters rejected the Republican's bluntly named Contract with America, which repudiated the modern administrative state in favor of a return to laissez faire. Their core constituencies and the principles they stand for thus disavowed, leading candidates for both parties began to run against their traditional party platforms, lunging to occupy a neutral center where partisanship might claim to yield to sober dedication to the nation's problems: the decline of the school system, the severe strains on the family, the causes and consequences of criminality, and so on. With little to distinguish what they say, the candidates ingratiate themselves by the art of their delivery and the appeal of their persons, spending millions on electoral campaigns that make them out to be natural captains of the people while vilifying their opponents as cunning and corrupt politicians. The open scandal, of course, is that the hundreds of millions of corrupting dollars flowing into political campaigns and party organizations are (nearly all) legal under the arcana of US electoral law. Worse yet, the vagaries of constitutional jurisprudence and the self-serving reflexes of the powerful cartel of political incumbents of all parties make change unlikely.

Nor are the courts nearly as disposed as they on occasion have been to animate our democracy when the political system is unable to dis-entrench interests and institutions that stifle it. In the 1950s and 60s they famously attacked racial segregation in schools and elsewhere; in the 1970s they helped open to the public the iron triangles of regulated interest, regulatory agency and congressional oversight committee. Part of their current inaction is owed to conservative appointments to the bench, part to the entanglements of rights jurisprudence itself. (Decisions protecting certain campaign spending as an expression of free speech, for instance, make the Court an obstacle rather than an agent of electoral-finance reform.) Much is fairly explained as the self-protective caution of a an institution that has learned through the mixed results of earlier activism both the limits of its own powers to direct reform and the dangers to itself of commanding what it cannot direct. But the result is that the Supreme Court mostly ratifies the politicians' stalemate by inaction of its own. (State courts are in some regards a different matter, as we will note below.)

But still and all, yes, democratic renewal. Beyond the political stagnation and judicial quies-

cence at the center there are vast changes in public institutions. After decades of querulous tinkering, the public schools in cities as large as Chicago and states as large as Texas are being successfully reorganized. Complex habitats are being restored and the »non-point-source« effluents that run off from countless farms and households to poison vast stretches of coastline are being reduced. Substance abusers are getting treatment tailored to the specifics of their life situations, and policing increasingly links the effort to stop crime to larger projects of community reconstruction. None of these changes, and many more like them, result from the mobilization of political parties in classic legislative battles or from the mobilization of citizens in traditional social movements. None subordinates the authority of the government to the values of particular communities or makes it hostage to the purely voluntary decision of private parties to regulate themselves. Yet all are the product of extensive involvement of concerned publics, and all reorder the workings of government and open manifold chances for participating in its continuing redirection. Together these changes are the sign and building blocks of a new kind of directly deliberative democracy that involves citizens in the determination of changes that affect them, changing in turn their preferences and their understanding of what we can do together. Or so I will argue in what follows.

The body of this essay presents a sufficiently detailed account of two of the reforms in progress to lend initial plausibility to an apparently outlandish thesis. One is the reform of public schools, with the focus on Chicago; the other is the transformation of environmental regulation reflected especially in Habitat Conservation Plans (HCPs) for ecosystem restoration. In both cases, after decades of skirmishing, inveterate antagonists (school administrators, teachers and parents in the one case, developers and environmental groups in the other) exhaust confidence in their respective strategies and relax doctrinal commitments (stricter environmental laws and enforcement as against deregulation, more resources for the public schools as against privatization). Facing urgent problems (crumbling schools and disastrous dropout rates, vanishing species and fear for human health) the actors agree to explore new solutions, without agreeing to put aside differences in values that originally divided them (whether government is in principle good or bad, preservation of the environment a sacred trust or a luxury for the rich). As they institutionalize their experimental efforts they stumble on architecturally similar arrangements that permit the piecemeal re-elaboration of complex wholes through the reconsideration of their parts: Local actors (individual schools and the parents, teachers and students that constitute them, local governments, developers, environmental groups and the ecosystem monitoring institutions they create) are given substantial liberty to set goals for improvement and the means for accomplishing it. In return they must propose measures for assessing their progress and provide rich information on their own performance. The center (the municipal or state school department, or the Department of the Interior) pools the information provided by local actors and ranks them according to (periodically revised) performance measures that give substance to standards of excellence and definitions of inadequacy. In the best cases the center provides assistance to those that are not improving as quickly as their likes. At all events it eventually sanctions those whose continuing failure seems incorrigible. The system increases local innovation by allowing those on the spot to test, within broad limits, their assumptions of what works best, while making the exercise of local discretion sufficiently transparent to assure public accountability and to move each locale to learn from the experiences of the others, and the polity as a whole to draw lessons from the experience of all. Thus is created a framework for establishing what is currently feasible, how those who fall short can work to achieve it, and those doing well can do better still. These arrangements allow the parties to get a grip, in a way to be specified in a moment, on problems whose complexity once seemed to put them beyond the reach of public action. They create new possibilities for citizens to steer public institutions that affect their vital interests by involving them in forms of problem solving that unsettle encrusted beliefs. Because this architecture takes its own starting points as arbitrary, and corrects its assumptions in the light of the results that they produce, I will call it experimentalist. It stands in a line with and in some cases has been directly influenced by the pragmatism of Pierce and

Dewey. Together the new forms of experimentalist problem solving suggest the feasibility of a shift of democracy – incremental but cumulatively transformative – from representative to direct and from aggregative to deliberative. Indeed we will see that these successes raise pressing questions about the relation between the new institutional armature and the traditional frame of democratic representation.

To get some purchase on these last, large questions, and to sharpen the notion of a directly deliberative renewal of democracy, the conclusion gives two general and complementary interpretations of the reforms in course: as a Neo-Madisonian re-elaboration of US constitutionalism and as a means to develop supranational forms of solidarity in response to globalization. I do not of course mean to suggest that the reforms in progress have already accomplished all that might reasonably be attempted in their name, or that some inexorable logic of social development assures they will. The purpose is rather to illustrate how, imperial appearances notwithstanding, current US experience grows from and can contribute to that popular re-imagining of democratic self-determination begun with the rebirth of the ancient freedoms in European cities, brought to American shores by the British colonists, and ever since the bond of political discourse on both sides of the Atlantic.

More than an Example, Less than a Demonstration: Two Cases of Directly Deliberative Democracy

School Reform in Chicago

For 30 years educational reform in the United States has been dominated by debate between proponents of the traditional model of locally financed and governed, but bureaucratically organized public schools and opponents who would replace public schools with privately controlled ones. Advocates of the traditional system see the open insufficiencies of public schools, particularly in the inner cities, as the result of the partly deliberate, partly inadvertent misallocation of resources: Because of the legacies of racism, and the intrinsically limited capacities for self-financing of poor communities, schools for disadvantaged lack the wherewithal to provide an adequate education. They tried to compel states or large metropolitan school systems to redistribute students from minority to non-minority schools, to redistribute resources from rich to poor schools, or to compensate students for the states' or districts' malpractice in failing to educate them.

Advocates of private schools hold public control of schools – like public control of nearly any institution – to be itself a fundamental and irreducible source of inefficiency. Because of the opportunities that public control inherently provides for self-dealing by entrenched interests, the public schools on this view waste the resources they have, and would only be encouraged in their profligacy by the provision of more. The remedy from this point of view is privatization. Broadened educational markets might be achieved in a roundabout way by paying private management companies a fee to operate public schools, but only if certain performance goals are met. Or tax funds could be used to subsidize the tuition payments of pupils who could not otherwise afford the costs of private and parochial schools.

But even as these ritual exchanges preoccupy public discussion of education reform, each side's partial successes in achieving its goals have cast substantial doubt on the fundamental assumptions of its larger program. The progress of new reform movements of a type foreseen by neither camp, and inexplicable in their contrary categories, has reinforced the doubts raised by these discrediting successes.

For advocates of public schooling, the disconcerting victories have come primarily in the form of court desegregation orders transferring minority children to nonminority schools, or redistributing resources to poor and minority schools. But transfers of children have proven too politically explosive to survive, both because majority families abandon public schools unless they can choose ones that draw pupils like their own, and minorities refuse to accept the idea that their children can progress only in proximity to white children, at the cost of their cultural cohesion. Transfers of funds, to the extent they are any less politically explosive, have seldom, if ever, produced anything like the promised benefits to improved student performance.

The privatizers' discomfit results from the repeated failure of school-management companies

to meet the goals agreed in their contracts with public authorities, and of advocates of privatized education to provide compelling evidence that private schools can outperform public institutions without handpicking their students.

On top of these complementary reverses, and overtrumping the sense of limitation and failure that they might by themselves suggest, are several distinct but related clusters of promising innovations in school reform – all improbable, and evidently contradictory, given expectations framed by the dominant debate. One such cluster is the movement to set standards for school performance at the state and federal level, and to rank schools accordingly. A second and closely related movement is to establish procedures by which schools that fail repeatedly to meet the prevailing standard, or to show signs of increasing ability eventually to do so, are removed from local control and placed in receivership under the authority of some higher entity until they can demonstrate the capacity for autonomous reform. A third cluster of reforms, apparently pulling in the opposite direction, devolves responsibility for governing schools from state commissioners, district superintendents, and school principals to school-based management teams of parents, students, teachers, and business and community leaders. Running still more in the direction of local option and away from standardization is a cluster of efforts to expand the choices available to public-school students by allowing for the creation within existing districts of charter schools offering specialized curricula or innovative teaching methods (language immersion, theater, situated or project-based learning), and allowing students to choose to attend one of these rather than accept assignment by place of residency.

All of these movements dis-entrench established interests and raise the accountability of school officials by exposing poor performance to public scrutiny and criticism (in the case of rankings) or corrective action by public institutions (receivership) or users (parents taking over the management of their schools, or sending their children to charter schools with good reputations as opposed to local schools with bad ones). They thus effect changes in the model of public schooling that its advocates have often suggested were unnecessary, and that critics of the model have held to be impossible. The enthusiasm that these and related measures are currently winning from educational professionals, school administrators, legislators, courts, federal regulatory authorities, and involved citizens – many of them long partisans of one or another of the familiar positions – is thus a measure of the extent to which the assumptions embedded in current debate divert reform effort from the actual course and possibilities of renewal of the schools.

School decentralization in Chicago in the last decade suggests how these movements could cohere into an effective and directly deliberative model of school governance. The core idea, anticipated above, is to give schools units districts autonomy to develop and act on reform plans, on condition that they provide information on performance sufficiently rich to allow evaluation of their efforts by higher level (municipal, State, federal) entities. This division of labor allows discovery of workable reforms and transition paths to them, as well as improvement of the capacity to measure performance, for example through still better standards. Standards in turn allow courts and superintending agencies to make judgments about the acceptability of educational outcomes – what results schools can be expected to produce – that reflect an informed consensus of possibilities, not the idiosyncratic expectations of particular judges or administrators. Likewise, the demonstration of workable reforms and transition paths allows for credible (because empirically defensible) judgments of how quickly failing schools can be expected to correct shortfalls in performance. Given local experimentation and information pooling, outside officials in this revised setting – courts included – can help coordinate a process of reform that, unaided, overwhelms them.

The Chicago reforms in particular compel attention for three reasons. First, their scale and complexity makes them a microcosm of the changes that could be scaled up to embrace schooling in the nation as a whole: Although the decentralization movement is largely municipal, concerning first and foremost the 560 elementary (K–8) and high (9–12) schools in the city limits and district authorities that supervise them, key aspects of the new relations between local schools and superintending center established in Chicago could be the model, in a fully fledged experimentalist

system, for relations between states and their school districts, or between the federal government and states in some circumstances and school districts in others.

Second, the progress of reform in Chicago manifests basic features of the process by which reform is advancing in the nation at large. Not that reforms in Chicago have followed a sequence of steps or stages that must be repeated if efforts at change are to succeed elsewhere, or that reform there enacted a concept of renovation whose outlines were clear at the outset. On the contrary: Reform in Chicago shows that it is possible to advance by deliberately disruptive half measures or bootstrapping: taking a step that both loosens the grip of the old system and prompts an exploration of alternatives, from which emerges a next step that does the same. Thus school reform in Chicago, as in the nation, has been deliberate but not planned. The protagonists had good reasons for their actions every step of the way, yet came to understand the architecture of their new system only as they advanced quite far in its construction. Above all, they persistently tied to escape the apparently inevitable choice between bureaucratic centralization and market-mimicking decentralization until – by innovations that were unanticipated until accomplished – they succeeded.

Finally, the Chicago reforms are exemplary in their results so far. They demonstrate that large school systems can be made manageable in the sense that particular schools can say what they intend to do by way of reforms, and then actually do what they intend (or be held to account if they do not).

The story of decentralization of the Chicago schools can be divided into three periods, of which the first and longest, stretching from the early 1960s through the mid 1980s, is marked by institutional inertia, punctuated by increasingly urgent and broader based criticisms of centralized administration along with more and more detailed proposals to reform it. A study commissioned by the school board in 1963 found that major reform of central procedures would be required to make even modest local reform possible. In 1981 another report repeated the core elements of the familiar objections to centralization, and proposed 253 specific measures as correctives. Six years later a follow-up study found that the most important, decentralizing recommendations had not been implemented. By then, however, school reform in general, and decentralization in particular were taking on the trappings of a social movement that included, besides representatives of business, purely local groupings focused on problems in particular schools, broadly groups, such as Designs for Change, that arti-culated detailed programs for decentralizing authority to local school councils, and built networks of supporters in dozens of schools through discussion of the ideas.

The second phase of reform, running from 1987 through 1996, produced a first, deeply disruptive break with the old system through what seemed at the time a radical, but still largely conventional, form of decentralization. The immediate impetus to change was a teachers' strike – the ninth in the preceding nineteen school years. To the broad public interested in school reform and frustrated at the meager results, the logjam came to symbolize the paralyzing self-absorption of the system as a whole and seemed to authorize, indeed require, decisive engagement by wider circles. The result was an alliance between Designs for Change and reformers in the business community in favor of state legislation providing for site-based governance: Each school in the Chicago system was to be governed by an elected local school council (LSC) composed, for elementary schools, of six parents, two teachers, two community members, and the principal. High school LSCs were to add a twelfth, student, member. The LSCs were given the power to hire and fire the principal, prepare the budget, and develop comprehensive three-year school improvement plans. As part of the compromise with business interests, proponents of decentral-ization agreed to accept system-wide monitoring of results, and a central office was created to this end. Early results were mixed: Some school councils made wise use of their powers, others did not. There were cases of corruption. The actuality of decentralization burnished again the virtues of centralized administration.

The third and decisive phase in the development of reform came in 1995, with the passage of further legislation that clarified the relation between local and central governance institutions and finally made manifest the novel division of labor emerging between them. The new law simul-

taneously increased the powers and capacities of local school councils to pursue their own course of action, and the powers of the central office to intervene in case the results of local decisions are unsatisfactory. For example, to increase local autonomy and capacity, monies previously passed from the central office to the schools for use for specific purposes – such as the construction of playgrounds – would now be available to them as block grants to be spent as changing local circumstances suggested. Determination of class size and the schedule of the academic year were excluded as subjects of central bargaining between the Chicago public schools and the teachers union, and thus left to local negotiation. The law required additional training in the technicalities of school budgets, in the selection of principals, and in the preparation of school improvement plans. Funds for the additional training are to be provided by the central office. To increase the accountability of local schools the law authorized the central authority to intensify scrutiny of poorly performing units – those where fewer than fifteen percent of the students tested met national standards – on probation or remediation lists. Listed schools would be inspected by an »intervention team« that advised the LSC and school staff on instructional, administrative and governance matters.

A brief canvass of the LSCs and central intervention teams in practice suggests that the autonomy of the former is broad enough to allow fundamental reorganization of local school programs, while the remedial capacities of the latter are sufficient to establish accountability and – just as important – are exercised in a way that is unlikely to provoke a reversion to the habits of centralized control either at the school level or above. Thus, in their three-year school improvement plans the LSCs can, as a matter of course, propose specialized programs in subject areas such as dance or business, as well as programs for the introduction of innovative methods of teaching particular disciplines, such as mathematics, or new, project-based, collaborative pedagogies. All of these, of course, require reorganizations of the school day, budget reallocations, and re-disposition of staff that were nearly inconceivable under the previous system. By the same plans the LSCs can as well propose, and obtain financing for, construction projects that facilitate curricular reforms. At the most ambitious, an LSC can undertake a comprehensive reorientation of the school and its methods that puts learning at the service of a social project and vice versa. An example is the rededication, at the urging of an LSC, of the public school under its control as an academy teaching an Afro-centric curriculum by drill methods (Direct Instruction) thought by the principal and the LSC (but only a small minority of education experts) to be especially suited to the needs of the disadvantaged student population. So far, indeed, reviewers from the central office have questioned school improvement plans because of the imprecision of the administrative or budgetary arrangements proposed. But no area of study or method of teaching has been ruled out of bounds.

For their part, officials in what has become the new center exercise their authority so as to complement, not challenge, the autonomy of the local schools. The clearest sign of this is that even when particular schools are failing, and the prospect of their dissolution is immanent, the new center does not issue directives for reconstruction. The reaction to all but terminal failure is, rather, to intensify monitoring of the troubled facility in a way aimed to helping the local actors to formulate and enact their own plan for redress: The chief purpose of the intervention teams, for instance, is to help the LSC prepare a »remediation« plan which removes the blockages to local discussion and decision-making that prevented progress within the framework of the normal school improvement plans. Only if these turnaround plans produce no forward motion is the school finally »reconstituted,« with the requirement that teachers and the principal reapply for jobs. This means that the intervention consists far more in analyzing with the local participants the causes of their past difficulties than proposing, let alone imposing, concrete measures for reorganization. Cumulatively this means that there is no centrally approved plan for the reorganization of distressed schools, and hence no general document that failing, or potentially failing, schools can adopt in the hopes of immunizing themselves, through conformance to rules, against the consequences of poor performance. Accountability in the form of remediation plans and, eventually, reconstitution, does not, in other words, plant the seeds of recentralization.

Given that the core elements of the division of labor between local schools and new center were fixed only in 1996, it is plainly too early to draw a comprehensive balance of effects of decentralization in the Chicago public school system. The institutional machinery appears to work: One crude measure of the interest and participation of local parents in school reform is that elections to LSCs are orderly and attract competent candidates in sufficient numbers. Surprisingly (given the expectation that institutional performance correlates with the resource endowments of the participating community), poor communities have been able to make as good use of the new possibilities for local control as better off ones: Studies that rank LSCs by the effectiveness of their use of school improvement plans find that the best performers are as likely to be located in poor catchment areas as middle class or rich ones. Test scores are rising, but not, so far, in a pattern that can be connected to the effects of decentralization.

The one incontestable achievement so far is the restoration of manageability of the local schools. Reform plans are being made and enacted. Manageability is not, to be sure, a sufficient condition for effective reform. But it is just as surely a necessary condition. In making the schools manageable, therefore, Chicago decentralization creates a foundation on which further reform can be built, and solves a governance problem that seem intractable to our institutions – courts and federal authorities above all.

A more complete account would have to be at once more expansive and more cautious: It would have to show how many aspects of the Chicago innovations are being emulated or elaborated independently in other large cities: Memphis, Tennessee, for example, where the municipal school district obliges local schools to begin reform by choosing as a reference point for their own efforts any of some 20 well elaborated models of school reorganization, and then adjusting the chosen schematic to local needs. A fuller account would have to show as well how states such as Texas, Kentucky, and Florida are developing elaborate institutions for assessing performance of schools and pupils, and how state courts – often relying on the state's obligation under its own constitution to provide pupils with an »adequate« education – are using these institutions to define the burdens they place on public authorities.

But the fuller account would have to be more cautious as well, underscoring the ways that old antagonisms – between, say public-school advocates and privatizers – can be fought out in new settings: By making standard tests sufficiently demanding, failure a bar to promotion and graduation, and refusing to provide aid to students who fail or their schools, opponents of public education can precipitate an immediate crisis of the schools, and hope that the privatization movement profits from the resulting frustration. Such may be the strategy of several conservative appointees to the Massachusetts school commission, for instance. But while it is still possible to revive the old conflicts, it takes increasingly unlikely alignment of the political stars to do so. That is itself a crude measure of the extensive change already accomplished. This same measure yields a similar result when applied to changes in environmental regulation, to which we turn next.

Habitat Conservation Plans and the Re-Orientation of Environmental Regulation

Environmental regulation, too, in the United States is rapidly shifting toward a new performance-based architecture that promises to be at once more effective and flexible than current arrangements, yet also more democratic. As in the case of schooling the emergent regime moves away from centralized, bureaucratic direction in search of novel governance mechanisms that aim to combine the virtues of localism, decentralization, and direct citizen participation with the discipline of broader coordination, transparency, and public account-ability. One example is the governance regime of the Chesapeake Bay, the largest estuarine system in the US. At the center of this regime is the Chesapeake Bay Commission, representing and answering to the states of Maryland, Pennsylvania, and Virginia, which lie on the Bay. The regime's local units consist of entities like tributary teams: groups of neighbors living on the same water course who together monitor and plan to reduce the levels of effluents they expel into the Bay. The Commission oversees a web of institutions that pool local monitoring into hydro-

logical models of the Bay, and using these creates framework rules for the next round of monitoring and effluent reduction. Another example is the toxics use reduction regime in Massachusetts. The local units are firms, which, acting often through pro-ject teams composed of engineers, managers and production workers, are required to give an extensive account of amounts of listed toxic substances they use as inputs, and the proportions in which these starting materials are transformed into products or result in waste that is captured for secure storage or simply spilled into the environment. In addition, firms must formulate (but are not obligated to execute) plans for the reduction of the toxics they use or produce. Again a network of public institutions pools the results and uses the pooled knowledge to help firms to accomplish and eventually redefine the goals they set. None of these programs should be confused with mere voluntarism, understood as the abdication of public authority and responsibility to private actors. All penalize non-compliance with reporting obligations. Most operate against the backdrop of minimum standards for, say, clean water, as defined by traditional regulatory legislation, although, as we will see, the operation of the new architecture is transforming the meaning of the background rules. Finally, while all the programs taken together are recognized as a new model of environmentalism, none is itself a fully formed prototype of the new regime, equally adept at local monitoring and central pooling.

For our purposes the most illuminating of the new environmental programs is the system of habitat restoration emerging in Habitat Conservation Plans (HCPs). For one thing, the evolution of the HCPs clearly demonstrates the insufficiencies of the familiar form of regulation and the possibilities of the new. For another, the insufficiencies of the current HCPs suggest the need and possibility of reshaping the institutions of representative democracy to accommodate public action by direct deliberation.

HCPs are the descendents of one of the most famous pieces of the centralized or command-and-control legislation that defined early environmentalism in the US and elsewhere: the Endangered Species Act (ESA). Section 9 of the ESA prohibits the »taking« of listed wildlife species. »Take« includes both direct injury and habitat modification that »kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding or sheltering.« Like command-and-control legislation in general, ESA regulates too much and too little. It regulates too little because it provides next to no protection for species in the fragile state when they are not yet unambiguously in danger of extinction, but when the circumstances endangering them are still fluid enough to be undone without enormous exertion. It regulates too much because once a species is in danger of extinction, it stops additional harm by direct human intervention, but says nothing about how to restore the habitat so as to prevent the damage already done from finally extinguishing the species.

Because of these limits the law was for a long time erratically applied. When it was, landowners, industries, and communities unsurprisingly complained that they were unfairly singled out under a harsh and arbitrary rule of dubious benefit to the protected species. In 1982, Congress responded by authorizing the issuance of permits to »take« listed species when taking is »incidental to, and not the purpose of« an otherwise lawful activity. To secure a permit, the applicant must produce an HCP and demonstrate that the associated take will not appreciably reduce the likelihood of the species' survival and recovery.

Little use was made of the exemption until Bruce Babbitt's appointment as Secretary of the Interior in 1993 under the Clinton Administration. Babbitt and his staff saw the HCP process as a way to reconcile development and ecosystem protection. Opportunities to demonstrate the workability of this approach arose in San Diego and Orange Counties, where urban sprawl endangered species like the California gnatcatcher songbird by encroaching on its coastal sage scrub ecosystem. When the gnatcatcher was proposed for listing under the Endangered Species Act, development interests were so alarmed at the prospect of a Section 9's prohibition against »taking« that they were willing to entertain almost any alternative to ESA listing. Under the auspices of the California Natural Communities Conservation Planning Act (NCCP) and Federal HCP provisions, landowners, state and local officials, conservationists, and other parties negotiated the first of a new generation of participatory and performance-based integrated, multi-

species, regional HCPs in San Diego, Orange, and Riverside Counties. The innovation spread rapidly. By April 1999, 254 Plans – regulating more than 11 million acres – had been approved and 200 more were in various stages of development.

The Plans obligate landowners to dedicate large blocs of land for exclusive use as habitat reserves for unlisted as well as listed species and restrict development in adjacent buffer zones. They also specify biological and environmental monitoring regimes, governance institutions, and funding mechanisms as well as a range of »adaptive management« measures that allow adjustments based on the results of monitoring, new scientific information, and changes in conditions. In return, landowners receive »incidental take« permits to develop remaining lands in accordance with the overall plan. The agreements are controversial among environmentalists, some of whom prefer strict application of Section 9, and among landowners and developers, some of whom see the HCP process as legalized extortion. But many leading environmentalists, landowners, public officials, and scientists contend that, on the whole, these agreements produce more, better, and more sophisticated ecosystem management regimes than would emerge from even the strictest application of Section 9.

Increasingly, HCPs are formulated by diverse affected parties and move beyond basic land use planning approaches to embrace water quality and stream flow measures, ecosystem restoration projects, forestry and agricultural »best management practices,« and a variety of other implementation measures.

But the Southern California successes are slow to diffuse to all HCPs because the emergent nationwide HCP regime still does poorly at pooling the information generated by local projects or at systematically learning from successes and failures. The result is nearly unsupervised local autonomy with correspondingly wide variations in the performance of HCPs from one place to another. Thus local circumstance, seldom corrected by national discipline, determines whether an HCP monitors its progress well or poorly, or whether its decision-making is accessible not only to local dealmakers, but also to independent scientists, conservationists, and generally informed citizens. Often, in fact, HCPs amount to an agreement between a permit seeker and a Service field agent. Where the experience of the Chesapeake tributary teams shows that open participation and good science may be mutually reinforcing, this kind of involution can lead to self-deluding celebrations of expert powers and so to underestimation of the combined poli-tical, scientific, and practical complexity of large-scale ecosystem management. At the worst it can undermine the democratic legitimacy of HCPs by transforming them into unprincipled backroom deals between regulators and the regulated.

In response to such concerns, two measures – a new Fish and Wildlife Service guidance and the Endangered Species Recovery Act of 1999 (the »Miller Bill«) – have been proposed to create a minimal informational infrastructure for the coordination of HCPs, and thereby to improve performance of individual plans with respect to monitoring and public participation. As concerns monitoring, the guidance directs the Service to create a database that tracks basic plan features such as permit duration, acreage covered, species and habitat details, authorized take, and permitted activity. Similarly, under the Miller Bill, permit holders would be required to report publicly on actions taken in accordance with the plan, the status of jeopardized species, and progress toward objective, measurable biological goals. The Secretary would be required to report on the implementation and quantitative biological progress of each plan every three years.

As concerns participation, the Fish and Wildlife Service guidance does little more than gesture at improvement. The Miller Bill goes further, instructing the Department to take steps to ensure balanced public participation in the development of large scale, multiple landowner, and multispecies plans.

These concerns about the public accountability of HCPs shade into a broader concern that these designs may foster a parallel government in tension, if not outright conflict, with the established constitutional order. HCPs, by continuously reinterpreting ends in the light of new experience with means, and vice versa, combine legislative, administrative and judicial functions so as to soften those familiar rivalries between coordinate branches of government which, in the US constitutional tradition, are thought to prevent abuses of public

power. Nor are they currently subject to regular, sharply focused legislative review. Finally, since they are suffused with deep public-private collaboration along the full spectrum of regulatory action from definition of goals to selection of means and enforcement of standards, they tend to erode the sharp lines that customarily divide public regulatory authority from the sphere of private activity.

The conflict between directly deliberative, problem-solving regimes and the institutions of pluralist democracy is especially visible from just outside the circle of immediate participants in experimentalist regulation. To a municipal or county official accustomed to a free hand in matters of zoning and land-use planning; to the officer of a national environmental organization, habituated to the idea that the best way to protect endangered species is from a seat at a hearing in the nation's capital; to a legislator with independent ideas of what counts as too much or too little regulation, or too much or too little federal intrusion – to all of these, directly deliberative decision-making may sooner or later seem a circumvention of rights and prerogatives owed to them by the administrative state. From their perspective, the advocates of environmental experimentalism look suspiciously like a league of mutually protective colluders, willing to gloss over one another's overreaching on the charitable grounds that all experiments entail mistakes or out of the cynical expectation that in case of difficulties one hand will wash the other.

A way to resolve this ambiguity without sacrificing the regulatory innovations is to make reform of administrative agencies on experimentalist lines one of the conditions for the legitimate decentralization of authority to local actors. The Miller Bill suggests the elegant simplicity with which this can be done. By requiring that the Secretary of the Interior review each HCP triennially, recommend such adjustments as may be necessary, and publish an annual report on the status of all HCPs, Congress can see how well the Department is observing HCPs even as it observes how well the latter are monitoring themselves, and whether they are benefiting from national information pooling.

Notice that Congress, if it passed the Miller Bill, would subtly modify both its own legislative role and that of the administrative agency. Congress's role would shift from the familiar one of setting some relatively circumscribed public goal – protecting endangered species – and delegating responsibility for achieving it to a federal rule maker, to the novel role of authorizing and conferring pluralist political legitimacy on the constitutive framework under which citizens as local agents can experimentally determine how to pursue a presumptively broad and changing project – protecting and restoring habitats. The role of the Department of the Interior would shift from relying on its own expertise and judgment to help craft the agreements and determine their acceptability, to rigorously policing a framework within which a broad and open circle of participants, local and national, can determine for themselves how to meet the goals it sets for itself.

Political Implications of Experimentalism

As before, the trajectory of analysis has taken us from the breakdown of an old order housed in the familiar regulatory state, to fumbling adjustments of traditional solutions to changing circumstance, to halting elaboration of what I am calling experimentalist alternatives, and finally to realization that this alternative will entrain further changes in the background institutions that frame it. From here the way forward branches. Some readers might wonder why experimentalism emerged with particular clarity in the areas presented, and not, say, in health care or labor relation? (There are signs of a change in this direction in both; but developments in these areas have not proceeded as far as in the examples I chose, and it is certainly pertinent to ask why.) Such readers will think that the best way to learn more about experimentalism is by investigating why it emerges in some places rather than others.

For other readers the cases of experimentalist success will not prompt questions of why experimentalism emerged in this or that context. Every new thing, after all, arises in some places before others. What they will find remarkable is that experimentalism could succeed at all, given the apparent intractability of the problems it addresses and the way its operation violates familiar assumptions about the impossibility of direct participation, the organizational superiority of hierarchy,

and so on. They will wonder accordingly how its success changes our sense of our possibilities for acting together through politics.

Ultimately both lines of inquiry have to be pursued; indeed, insofar as they are both concerned with aspects of the generalizability of the new innovations, they converge. For now I focus on the second, because it offers two immediate gains. First, reflections on the broadly political implications of experimentalism helps connect bottom-up discussion of problem solving to large current worries about the efficacy and legitimacy of modern democracies formulated in different ways at the heights of political and theoretical debate in the US and the European Union. Unless these connections are established it is easy to dismiss the reforms considered, and many others, as irrelevant to the proverbial big picture. Second, establishing these links helps in turn connect the apparently disparate US and EU debates on these themes: As we will see next, the combination of local innovation and public accountability, characteristic of experimentalism, speaks to the monitoring of public institutions emphasized in the US on the one side and to the need for social learning increasingly key to EU debates on re-imagining solidarity and justice on the other.

Experimentalism as the Neo-Madisonianism

It is an historical fact that in the US, innovations in democratic governance, however effective they promise to be, must be reconciled with our Madisonian tradition to be legitimate. Power in the Madisonian scheme is carefully parceled out among rival branches and levels of government. Deliberation – preference-changing reflection in the service of the public interest – is the province of a senatorial elite buffered from the immediacies of everyday concerns. The rivalry among branches and levels of government safeguards liberty by providing checks and counterweights to the excessive ambitions of any part of the machinery of government. By blurring the division of labor among the branches and levels of government and tying the ultimate resolution of large questions of policies to daily collaborative problem solving, experimentalism seems to repudiate this Madisonian legacy, perhaps putting our liberties at risk.

And yet the experimentalist accountability established by problem-defining legislation and the broad grant of problem-solving authority to local entities could nonetheless be considered a neo-Madisonian generalization of the original design for three reasons. First, it too harnesses a form of competition among institutions to ensure that they all act in the public interest. Where the design of the 1787 Constitution relies on the rivalries among specified branches and levels of government, the emerging »constitution« of experimentalist institutions like HCPs combines the mechanisms of strict performance monitoring, comparative benchmarking, and the pooled experience of diverse, often rivalrous jurisdictions into an engine of accountability that disciplines state action regardless of the precise subdivisions of government. Second, instead of seeing deliberation as possible only in the exceptionable circumstances of insulated chambers, neo-Madisonianism emphasizes the capacity of practical problem-solving activity to reveal new possibilities in everyday circumstances. It thus opens the way for solutions that are as different from the vector sum of current interests as those achieved by senatorial deliberation, but sees these solutions as the result of the activity of the many, not the repose of the few. Finally, in an era in which the sub-national governments themselves have responsibilities and apparatuses larger than those of nineteenth-century nation states, the emerging architecture of monitored local experimentation disassociates »central« and »local« from familiar jurisdictions of government, and allows their meaning to vary as problem-solving within the emergent design of coordination suggests. Like the older federalism, neo-Madisonianism lays the foundation for a resilient mutual accountability between center and locality, dispassionate expert and engaged citizen. But it makes the division of labor among territorial units the provisional and corrigible result of the work they do, not the expression of historically entrenched responsibilities. Put another way, neo-Madisonianism simultaneously de-naturalizes our frame of government – because the boundaries of mutually accountable, problem-solving units are no longer taken as given – while connecting it more directly to the surprising contingencies of citizens' lives – because the problem-solving units are shaped and reshaped by practical

deliberation directed to uncovering and making sense of these surprises.

Reconfirming and Extending Solidarity Through Collaborative Exploration

Europeans, and European social democrats in particular, are likely to take all this worry about protecting the government from the people and the people from the government as a parochial affair: a legacy of the Tudor polity that the US inherited from Great Britain, and another demonstration, as though one were needed, of the American inability to understand the concerns for social and universal justice that animated the welfare state and the Enlightenment. From this point of view experimentalism, regardless of any possible fidelity to US constitutional tradition, must address two pressing problems if it is to be more than an administrative or managerial curiosity.

The first has to do with solidarity. Those who press it most urgently stand in the tradition of reform tied to the social welfare state. In retrospect the success of the welfare state depended on the common ethos or ethical identity of its citizens: Only if citizens recognize one another as fundamentally alike will they agree to redistribute resources in favor of those who fair poorly in market exchanges. As heterogeneous peoples are forced to amalgamate into composite polities under the pressure of globalization, the common basis of redistributive solidarity is jeopardized. Because there is no »European« people, this worry goes, the harmonization of law that makes an efficient common market will typically lead to regulatory races to the bottom, as each national group abandons costly protective rules so domestic producers can keep up with less regulated competitors. How can experimentalism contribute to the reconstitution of solidarity under conditions of radical diversity?

The second concern is with norms of justice, broadly conceived as obligations we owe our fellow human beings; those most ardent in urging it continue the Enlightenment tradition of universalizing reform. They too fear that democracy may be reduced to an economic constitution under the pressure of competition. But they also fear that any people that identifies justice with the way it lives may oppress dissidents within its midst and turn bellicose against other nations that live differently. They look instead to the capacities we share as reasonable beings or as speakers and hearers bound – as conditions of mutual intelligibility – by norms of veracity and probity that make communication itself an occasion for self-reflection. Their hope is that these capacities, shaping and reshaped by the history we make, can give rise to ties of fellowship as powerful as those rooted in sentiments of solidarity, but less easily perverted by parochialism. But the recrudescence of group conflict of many kinds and the erosion of life worlds sheltered enough from strategic market exchange to admit of self-reflective communication give pause. Perhaps even universal conceptions of justice depend on widely diffused but historically shared values? Habermas, whose life work shows how theories of the moral constraints inherent in human capabilities can guide and be guided by effectively radical democratic politics, calls this substratum »constitutional patriotism«. The worry is that the same forces undermining the ethics of national solidarity are sapping the moral capabilities as well. Can experimentalism rekindle solidarity, while connecting it to respect for broad principles of justice?

To see how experimentalism responds to both these concerns – and in a way that helps resolve the tension between them – it is necessary to return to the relation between values, strategies, and programs from which experimentalism arises, and which it in turn helps make politically and institutionally tractable. Experimentalist programs, recall, emerge where actors, having lost confidence in long-standing, broad-gauge strategies (more market, more state), and without agreeing on deep values (the primacy of the individual as against the group, or vice versa), are nonetheless convinced of the need to respond to urgent problems.

This condition itself bespeaks a kind of interdependence born of radical indeterminacy or complexity. If the actors had workable projects, they would act alone or in concert to realize them. Because they do not, they must collaborate with others whose orientations and general goals will differ from their own to uncover new possibilities and discover dead ends before incurring ruinous costs. In such a world, »strong« actors cannot rule out the possibility that they will come to

depend on solutions discovered by »weak« ones. Even the strongest favor some division of investigative labor to going it alone. Homogeneity is here more nearly a threat than a buttress to this solidarity of uncertainty. Experimentalist search in turn strengthens these incipient ties. It institutionalizes the commonality of initial uncertainty in the very process of creating a common language for expressing the results of joint exploration. With the articulation of this language comes deep familiarity with others that creates a kind of intimacy precisely because it facilitates surprising discoveries about oneself.

Such collaborative exploration, finally, occupies a middle ground between the exfoliation of common values in the historical ethos of a nation state and the evolution or discovery of norms of universal justice through the exercise of the capabilities of reasonable, communicative beings. Unlike the first, which is a form of self-explication indifferent to alien viewpoints, the experimentalism of directly deliberative democracy invites evaluation of one's own choices with the choices of others. Although comparison focuses on broad but concrete problems, and not explicitly on values, the result is to change the parties' sense of possibilities in a way that cannot but change their ideas of how it is good to live, and so, indirectly, their deep criteria of evaluation. Unlike the second, this discovery procedure and the self-reflection it occasions cannot claim to be an algorithm for hitting upon (nearly) universal truths. Its promise is to spare us the parochial, not to deliver the (nearly) transcendent.

To be more than a jeu d'esprit this sparest sketch of directly deliberative democracy would have to be extended in two directions. First, beginning responses to such currently pressing problems as the harmonization of the EU laws, does the emergent regime give evidence of providing a web of rules and related services that together give its citizens protections against untrammeled market operations arguably equivalent to those enjoyed under the welfare state? Second, it would have to be shown that this link or entanglement leads not to the recognition of a solidarity of sentiment, but to an institutional acknowledgement and commitment to sustain a commonality of capabilities. Of these the ability to engage, as citizens, in common forms of problem solving that underpin, and render mutually intelligible, the efforts dedicated to separate projects would be especially important. The resulting web of connections might (indeed very probably would) redistribute resources from one group to another. But redistribution would be the consequence of a solution adopted first and foremost to address broad common problems (above all, the problem of maintaining the ability to address together, as a democracy, unforeseen problems), not to correct social or economic imbalances. Standards requiring that citizens be provided with adequate levels of environmental protection, workplace health and safety, and education and vocational training, where »adequate« is continuously redefined in the light of experimental advances in the respective areas, would have this result.

A look at the vast literature on EU harmonization suggests that there is quite arguably motion in this direction. In policy arenas such as health and safety, environmental regulation of products and production processes, competition policy, telecommunications standards, and others, there is no race to the bottom as feared. Are the reasons to be sought in some lucky and limited accidents of the administrative structure of the EU and member states that allow public-minded actors to prevail over selfish ones? Or, without forgetting the caprices of the Brussels bureaucracy, the limits to parliamentary supervision and the other elements of the »democratic deficit« in the EU, can it be that directly deliberative structures, analogous to those emerging in the US, are taking shape behind the screen of »comitology«? If one inchoate democratic renewal, why not two?

For now all we Americans can say for sure is what we say whenever the winds of change are rising: We are not in Kansas anymore. Nor are we in Rome. Perhaps, though, we can hope that the politics of the coming decades renews the tradition of practical democratic experimentation that defines us as part of the Atlantic community, and opens that community to the world.

This essay is the product of teamwork done in collaboration with Joshua Cohen, Michael Dorf, Archon Fung, Oliver Gerstenberg, Brad Karkkainen and Dara O'Rourke. ◀